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ABSTRACT

Equal employment opportunity (EEO) and affirmative action policies have been the subject of much debate in recent years. Much of the disagreement is based on incomplete or distorted views about what affirmative action is and how it affects minorities and nonminorities. The Study Group on Affirmative Action was created to investigate current EEO and affirmative action policies and practices and to analyze alternative remedies which have been proposed. The major recommendations of this group are the following; (1) The House Committee on Education and Labor should document the trends and changes in the employment of minorities and women since 1980; (2) Congress should reaffirm the national commitment to achieve full employment and should urge the President to support policies designed to lower the unemployment rate; (3) more federal attention should be given to the wages and salary level of minority and female employees in order to sensitize employers to the importance of upgrading wages and positions; (4) more attention should be focused on the employment policies of small and medium-sized firms; (5) employers should broaden the scope affirmative action to include improving the quality of education in schools to ensure a steady flow of productive employees; and (6) vigorous enforcement of affirmative action policies should continue. (VM)

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A REPORT

OF THE

STUDY GROUP ON AFFIRMATIVE ACTION

TO THE

COMMITTEE ON EDUCATION AND LABOR
U.S. HOUSE OF REPRESENTATIVES
100TH CONGRESS, FIRST SESSION

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AUGUST 1987

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AUGUSTUS F. HAWKINS, *Chairman*

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FOREWORD

Equal employment opportunity (EEO) and affirmative action policies have been the subject of substantial debate in recent years. As these issues lie within the jurisdiction and purview of the Committee on Education and Labor, this Committee awarded a contract to the Wharton School, University of Pennsylvania, to convene a committee of experts in the field of equal employment opportunity law and policy who would perform a scholarly and reasoned analysis of this issue. The report of this Study Group on Affirmative Action is the result of this considerable effort.

The Report of the Study Group on Affirmative Action is being made available to the members of the Committee on Education and Labor, the U.S. House of Representatives and the general public so that the findings and recommendations presented herein may be used as part of the continuing review of policies to promote equal employment opportunity and affirmative action.

The report contains a thoughtful analysis of current EEO and affirmative action policies and practices and addresses the continued validity of and necessity for such actions. It also examines the social and behavioral science evidence relating to the development, implementation and impact of such efforts to promote equal opportunity in the workplace. Finally, the report also addresses and analyzes proposed alternatives to affirmative action as a means to remedy the effects of past discrimination.

It is hoped that this report will clarify some of the major issues surrounding the debate on affirmative action and related equal employment opportunity law enforcement policies and practices.

REPORT OF THE STUDY GROUP ON AFFIRMATIVE ACTION

TO THE

HOUSE COMMITTEE ON EDUCATION AND LABOR

U.S. CONGRESS

WASHINGTON, D.C.

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February 1987

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February 9, 1987

Honorable Augustus F. Hawkins
Chairman
Committee on Education and Labor
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I herewith submit the Report of the Study Group on Affirmative Action, developed and prepared with Committee support. The Report traces the development implementation, and impact of affirmative action policy, and illuminates some of the key issues in the continuing debate over this important topic of national concern.

As coordinator of the Study Group, I prepared the Report, but I benefited greatly from the assistance of our steering committee, and others who participated in the dialogue on affirmative action. Despite the divergence of opinions on details, the findings and recommendations in the Report represent the sense of the discussion among those who participated in the dialogue. The names and affiliations of the participants are listed in Part I of the Report.

I hope you and other members of the Committee find the Report informative and useful in your continuing review of affirmative action policy. I enjoyed the opportunity to be of service to the Committee in this important venture.

With continuing best wishes,

Sincerely,

Bernard E. Anderson

BEA:mmh

REPORT OF THE STUDY GROUP ON AFFIRMATIVE ACTION

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ACKNOWLEDGMENTS

This report benefited from the support and cooperation of many persons too numerous to mention, but special thanks are due to those who contributed significantly to the study project. We are especially indebted to Edmund Cooke, legal counsel of the Committee on Education and Labor whose insight into the issues, sagacity with administrative detail, and limitless patience sustained and enriched the project from its inception. Shirley Wilcher, also of the Committee staff, was very helpful at critical times with advice and counsel.

The Study Group received valuable briefings on current issues of equal opportunity and affirmative action from attorneys N. Thompson Powers, William Robinson, Barry Goldstein, and Kenneth McGuiness. Special insight into the critical issues was also provided by Julius Chambers and Eleanor Holmes Norton. The author's former colleagues at the Industrial Research Unit of the Wharton School, University of Pennsylvania were a continuing source of knowledge and insight.

Special plaudits are due to the Joint Center for Political Studies, Washington, D.C. for arranging the one-day dialogue on affirmative action. And, of course, the Report could not possibly be completed without the priceless assistance of the staff at the Wharton Center for Applied Research, especially Michelle Henry, Cathy Brundage, and Wenda Foster. Their services greatly facilitated the many tasks necessary to prepare the Report.

Finally, the findings and recommendations contained in the Report capture the views of all who participated in the study. Despite the divergence of opinions on details, the recommendations represent the sense of the many discussions held with those who shared so freely with their views on the very difficult issue of affirmative action. We hope the report will be information and useful to the Committee as it pursues a continuing interest in finding ways to assure equal opportunity to all Americans.

I. ABOUT THE STUDY GROUP

During the past decade, affirmative action has been the object of an increasingly quarrelsome debate. Critics question the legitimacy of affirmative action as a device for assuring nondiscriminatory behavior. Advocates argue that the special measures reflected in affirmative action are essential for reducing employment and income inequality. Unquestionably, the deep schism over affirmative action retards the development of national consensus required to achieve an open society with equal opportunity for all, without regard to race, sex, color, or national origin.

Some of the criticism of affirmative action is rooted in a philosophical aversion to government intervention into private decision-making. Individualism, self determination, and fairness are strongly held values of the American people. Few aspects of national life run against the grain of public sentiment as strongly as policies that seem to confer special privilege on some groups over others.

But much of the disagreement is based less on philosophical views about affirmative action than on incomplete or distorted views about what it is, and how it affects minorities, women, and nonminority men. For example, What is discrimination? Does discrimination mean only specific acts which deny opportunity to individuals based on their race, sex, or other personal characteristics; or is it also the systematic pattern of unequal participation by groups, such as minorities and women, in employment? Is it legitimate for courts, after finding discriminatory behavior, to order numerical hiring and promotion goals as a remedy for unlawful acts, and a method for achieving a better balance in job opportunities among minorities, women, and others?

Then, too, is affirmative action, including goals and timetables, synonymous with quotas? How does it affect the groups it is intended to benefit? Do they, in fact, obtain jobs that otherwise would be denied them? Do members of such groups feel less well of themselves because of doubts about their achievements in an environment of affirmative action? What is the impact of affirmative action on opportunities for white males? And what is the likely long-term impact of the policy on society as a whole, with its aspirations for intergroup harmony and institutional pluralism?

These and other troublesome questions have been debated vigorously during the past decade, and especially since 1981 when the Reagan administration introduced a more limited view of the role of government in social relations than had been customary up to that time. The shift in civil rights enforcement from an emphasis on the results to the intent of employer actions had a chilling effect on the support for affirmative action. The Reagan administration's approach to equal opportunity stressed the importance of correcting provable acts of discrimination rather than reforming the operation of employment systems that while ostensibly fair, still blocked a disproportionate number of minorities and women from employment.

In order to get beyond the controversy surrounding affirmative action, and to seek consensus on its value as a device for assuring equal job opportunity, a careful and dispassionate review of experience with the policy during the past decade seemed in the public interest. A study group was organized in early 1986 to assemble information related to the development, implementation, and impact of affirmative action, and after discussing the evidence, to make recommendations on measures to achieve equal employment opportunity now, and in the years ahead.

Congressman Augustus Hawkins, Chairman of the House Committee on Education and Labor, and a long time leading supporter of social and economic justice, encouraged the study initiative and obtained Committee support for the review. A contract was awarded to the Wharton School, University of Pennsylvania, for a one year study project.

A broad and diverse group of interested and knowledgeable persons was invited to participate in the study group. Representation was drawn from legal, academic, business, labor, civic, and public officials. The Group included both supporters and opponents of affirmative action. The only requirement for participation was a willingness to meet and discuss the critical issues and to engage in a dialogue on ways to achieve social and economic progress for minorities and women in view of changing economic, social, and legal conditions.

A small steering committee of six persons was organized to direct the work of the Study Group. The steering committee met five times during the year, and held discussions with practitioners and scholars on equal employment policy and practices. Special attention was given to representatives of the business community because of their critical impact on hiring and promotion decisions. Members of the Study Group participated in the meetings at various times, and a one-day dialogue was organized to give the group as a whole, an opportunity to exchange views on the current status and possible future directions for affirmative action.

Dr. Bernard E. Anderson, Senior Economist, Wharton Center for Applied Research, served as a coordinator of the Study Group. He was formerly Professor of Industry at the Wharton School, Director for Social Sciences at the Rockefeller Foundation, and Visiting Fellow for Public and

International Affairs at Princeton University. His published work, emphasizing employment policy, includes studies of affirmative action in the private sector. Other members of the steering committee include:

GEORGE SAPE is an attorney with the Becker, Epstein firm in New York. He previously served as Vice President of Organization Resources Counselors, Inc., a private advisory service to major corporations, and during the early 1970s, was special assistant to the Chairman, U.S. Equal Employment Opportunity Commission.

DANIEL LEECH, formerly Vice Chairman, EEOC, and now a partner in Leech, Brestz, and McGreevy of Washington, DC and California. He was previously a staff member of the U.S. Senate Committee on Labor and Human Resources.

MS. LYNN WALKER, Program Officer of the Ford Foundation, was formerly a Senior Officer in the litigation division of the U.S. Department of Justice, and before that, a staff attorney with the NAACP Legal Defense and Education Fund.

PROFESSOR JONATHAN LEONARD, an economist at the University of California, Berkeley has conducted studies on the statistical impact of affirmative action on minorities and women, and has published widely on the dynamics of labor markets.

PROFESSOR JEROME L. CULP, Duke University Law School is both a lawyer and an economist, and has written on the nexus between

STEERING COMMITTEE MEMBERS (cont'd)

civil rights enforcement and the labor market status of black workers. He was formerly a visiting research fellow at the Rockefeller Foundation where he organized a review of the U.S. Supreme Court's decision in Regents of University of California v. Bakke.

PROFESSOR ELIZABETH BARTHOLET, Harvard Law School, previously was a staff attorney for the NAACP Legal Defense Fund. She has studied and published research on labor market discrimination against women. Her recent research extends previous work on the theory of women's right.

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II. MAJOR FINDINGS AND RECOMMENDATIONS

A. Despite their gains in a widening range of occupations during the past decade, many minorities and women believe discrimination still limits their labor market opportunities. Such views were reported to the Study Group during its deliberations, and to staff members of the Committee on Education and Labor during a public forum on equal employment opportunity in early 1986. There is a perception that senior executives of major corporations have downgraded the importance of affirmative action, and that minorities and women have borne the brunt of company workforce adjustments necessitated by efforts to reduce production costs. Whether or not they are consistent with the facts, such perceptions might, nonetheless, adversely affect employee morale and productivity.

Recommendations

The Committee on Education and Labor, through its oversight authority, should hold hearings on recent trends in equal opportunity in order to document changes in the employment of minorities and women since 1980. In preparation for such hearings, the Office of Federal Contract Compliance should prepare a review of employment trends among government contractors, and the Equal Employment Opportunity Commission should do the same for employers who submit reports that agency. Special emphasis should be placed on changes in the utilization of minorities and women in middle and higher wage occupations. Further, employers representing a broad range of industries should be invited to offer testimony on current policies designed to assure equal job opportunity.

B. A careful review of progress toward the reduction of employment and income inequality confirms the importance of a growing economy as the sine qua non for the success of affirmative action. For example, in statistical analyses of racial income differentials, labor demand consistently shows a strong impact on changes in the gap in income and employment between minority group and white workers.

In an environment of vigorous economic growth and employment expansion, there is less resistance to special efforts to diversify the workforce by widening the opportunities available to minorities and women. Conversely, when growth is slow and job opportunities are less plentiful, deep concern about job security often retards new hiring and promotions. Under such circumstances, affirmative action becomes an easy target of criticism because of its perceived preference for employment of one group over another. The real, or potential discord and conflict within the workforce in an environment of employment retrenchment leads employers to place job security above affirmative action in their personnel practices.

Recommendation

Congress should reaffirm the national commitment to achieve full employment, as expressed in the Full Employment and Balanced Growth Act of 1978, and should urge the President to support fiscal, monetary, and employment policies designed to lower the unemployment rate. The current projection of 3.4 percent growth in real gross national product during 1987 is not adequate to achieve a reduction in the unemployment rate below nearly 7.0 percent, and will worsen the prospects for dealing effectively with layoffs that result from continuing structural change in the economy. Accelerated growth will generate a higher level of job creation that will, in turn, improve the prospects for success of affirmative action hiring and promotion programs.

C. Affirmative action enabled many minorities and women to enter occupations and industries from which they had long been excluded. But the success in reducing hiring discrimination has not been duplicated in occupational upgrading, especially among minorities in higher levels of private sector management.

Many minority and female employees are now in middle level positions where they feel frustrated about their prospects for promotion. Breaking through the middle level into higher management and executive positions is especially difficult because of the greater importance of subjective performance measures at that level of the job hierarchy. Under such circumstances, the failure of minority and women workers to advance in numbers commensurate with their overall participation in the workforce sparks cries of discrimination, even when other legitimate factors are involved.

Recommendation

In its employment monitoring practices, including preaward reviews, the Office of Federal Contract Compliance should give more attention to the wage and salary level of minority and female employees as compared with the number of persons employed in the different occupational groups. Broad occupational groups typically encompass a wide range of positions within an organization, and only partly reflect variations in the level of responsibility and compensation. By focusing greater attention on the wage and salary level of minority and female workers as compared with their occupational status, OFCCP can help sensitize employers to the importance of upgrading as well as hiring as an important goal of affirmative action.

D. The changing structure of American industry, including the recent number of mergers and acquisitions, has worsened the near term prospects for further gains in affirmative action, and threatens many of the gains achieved during the past decade. Evidence available from industries as diverse as communications and basic steel manufacturing shows that affirmative action suffers as management turns more attention toward the bottom line of short term profitability. Moreover, in an attempt to cut costs and improve the rate of return on investment, many firms forced into, or facing the threat of a merger or acquisition typically consolidate administrative staffs. The resulting labor displacement generates unemployment which falls heavily on recently hired minorities and women, including many in professional, technical, and managerial jobs.

E. Studies of the changing American economy suggest that prospects for employment growth among large firms, including those listed in the Fortune 500 largest industrial corporations, are very limited. During the past decade, 60 percent of all new jobs were created in firms employing fewer than 500 workers. During the 1981-1982 recession, small businesses generated twice the number of new jobs that large businesses lost, in effect accounting for a net gain of one million jobs. That trend is expected to continue through the next decade.

But there is a perception that small and medium sized firms have not done as well as large firms in developing and implementing affirmative action programs. Small and medium sized firms typically do not have professional staff specialists on affirmative action, and often do not conduct thorough and comprehensive reviews of their workforce with a view toward establishing affirmative action goals.

Recommendation

In its enforcement practices, OFCCP should devote more attention to the employment policies of small and medium sized firms. A careful review of the affirmative action plans of such firms holding government contracts, especially in nonconstruction industries, should be undertaken immediately.

Further, in designing strategies for more effective enforcement, more attention should be given to firms showing no minority group employment. Special consideration for technical assistance should be given to such firms when they seek authorization to compete for government procurement opportunities.

F. When affirmative action was introduced in 1961 as a device to help assure equal job opportunity, the objective was to make employers more aware of the total pool of job applicants available for work. But affirmative action was never intended to be a panacea for solving the unemployment problems of minorities and women.

Experience has shown an uneven impact of affirmative action. The better educated, experienced, and highly motivated minority group members and women have taken advantage of wider opportunities made possible through affirmative action programs. This has contributed to a widening gap within minority communities between those whose income and social status have improved, and others within the community whose status has worsened.

Many of those who were not helped directly by the affirmative action policies were inadequately prepared to meet employer hiring standards. Even today, large numbers of minority youth continue to drop out of school, or fail to achieve satisfactory standards of performance in basic skills. This problem has serious implications for the future, because more than half the new entrants into the workforce during the next decade will be members of minority groups.

Recommendations

Employers should broaden the scope of their affirmative action policies to include efforts to help improve the quality of education in the schools to assure a steady flow of productive employees. This is especially important for employers in communities where minority group youth comprise a large part of the school population.

Further, because employment often is a major incentive for youth participation in academic studies, employers should consider expanding their hiring goals to include disadvantaged minority youth for part-time jobs during the school year, and full-time jobs during the summer. Broadening affirmative action plans to encompass efforts to improve the quality of the labor pool will help narrow the gap in economic opportunity, and increase the potential for later success in minority employment. Improved private sector linkages with the schools can be made by firms of all sizes and in most industries. Such public/private partnerships should be promoted as a central feature of affirmative action plans.

G. Affirmative action policies were developed by the Federal government as a response to the effects of practices in both the public and private sector which excluded minorities and women from employment in a wide variety of occupations. Earlier prohibitions against discrimination, while necessary, were insufficient to change patterns of behavior and decision-making that while ostensibly fair, still rejected a disproportionate number of minority and female job applicants.

After more than a decade of enforcement, affirmative action policies now enjoy wide support in the business community. Many firms have found affirmative action a convenient device for identifying a larger pool of qualified workers, and a more equitable system for matching job requirements and employee qualifications. In many companies affirmative action has resulted in benefits to the workforce as a whole by generating fairer and more open procedures for hiring and promotion, eliminating job criteria unrelated to performance, and developing greater employer sensitivity to employee needs such as counseling, training, and fair grievance procedures. Such procedures have not been injurious to the interests of white males, but instead, have enriched the workplace for all employees.

H. Enforcement of affirmative action continues to be necessary to assure equal economic opportunity for minorities and women. But the form and substance of affirmative action might well be modified to take account of contemporary changes in the labor market, and in the structure and operation of many business firms.

For example, the de-emphasis of the federal government since 1981 on the development and implementation of goals and timetables has led some firms to a more diverse view of affirmative action. The decline in paperwork associated with the requirements of compliance reviews has, in some cases, freed up management to design more creative ways to integrate minorities and women into the workforce. But this is true only in companies where there is a strong commitment to achieving higher levels of employment for minorities and women. In other cases, lesser enforcement has been taken as a signal that measures to assure equal job opportunity are no longer required.

In firms with a strong commitment to affirmative action, its implementation often has been integrated into regular personnel policies where line rather than staff officers have primary responsibility for achieving results. Indeed, in some companies, such as Xerox, and Merck Company and Union Mutual Insurance Company, performance assessment, and its ultimate impact on compensation, includes measurement of a manager's success in achieving affirmative action goals.

But one result of shifting affirmative action from a staff to a line function is that some staff equal opportunity officers, often minority and female professionals, have been laid off. Observers of this development must be cautious in not automatically assigning discriminatory motives to such staffing decisions. It is important to assure minorities and women all available opportunities for retraining and reassignment consistent with personnel practices of the firm. But equal opportunity and affirmative action have never meant that under no circumstances and at no time would minority and female workers ever lose their jobs. The only requirement is fairness and equity in distributing the burden of necessary adjustments in the workforce.

Recommendation

The Committee on Education and Labor should urge the Office of Federal Contract Compliance and the U.S. Equal Employment Opportunity Commission to continue vigorous enforcement of affirmative action policy, including the use of goals and timetables as a device for measuring good faith efforts toward compliance. Moreover, both agencies should emphasize the importance of affirmative action by giving public recognition to employers, unions, and individuals who have made outstanding contributions to the advancement of equal job opportunity through the implementation of affirmative action programs.

Further, Congress should seek ways, through its budget and appropriation processes, to encourage and promote linkages between support for education and training, and the pursuit of affirmative action in both the public and private sectors. Indeed, the broad field of federal/state relations should be infused with the expression of the Federal government's commitment to affirmative action and a determination to see it become a regular part of the way the nation conducts its business.

III. AFFIRMATIVE ACTION: RESPONSE TO THE AMERICAN DILEMMA

A. Introduction

As we prepare to celebrate the 200th anniversary of the U.S. Constitution, our nation continues to seek ways to assure full participation of all the people in the rewards and responsibilities of American citizenship. That goal has been difficult and elusive, but is a challenge that must be met if the nation hopes to redeem the promises expressed in the Constitution.

Equal job opportunity is central to the enjoyment of many benefits of our society. The opportunity to work provides the main source of income to support a family's standard of living, and to prepare for the future. The denial of employment because of race, sex, creed, national origin, or other factors unrelated to individual's productive potential is one of the most disgraceful practices possible in a nation committed to equal opportunity and economic justice.

The nation's struggle to live up to its high ideals as a land of opportunity is reflected in the continuing effort to address the troublesome presence of race. W.E.B. DuBois, the dean of black intellectuals wrote shortly after the turn of the century that "the greatest issue of the 20th century is the problem of the color line." History has shown the wisdom of DuBois' judgment.

The struggle for equality began with the painful and destructive Civil War that culminated in the Emancipation Proclamation abolishing slavery. The struggle continued for the following century as the nation grappled with the legacy of slavery, expressed most vividly in the pervasive web of segregation. Race relations were characterized by a systematic denial of opportunity aimed at preserving second-class citizenship for Black, Hispanic, and other racial minorities during the late 19th and early 20th centuries. The denial of the rights of women was also a prominent feature of the American experience during that time, and was only partly relieved when women gained the right to vote during the 1920s.

Discrimination and the systematic exclusion of racial minorities and women from full participation in the economy became embedded in the attitudes, values, and behavior of virtually all institutions in American life. The labor market was replete with occupations in which the normal expectation was that no minorities or women would be employed. Job ceilings were imposed in occupations where minorities and women were permitted to work. America was widely heralded as the "land of opportunity," but that phrase was clearly understood to apply almost exclusively to white men.

The civil rights movement, often called America's second revolution, began to change the status quo by challenging the denial of basic rights and insisting upon the protection of equal opportunity. Beginning with the U.S. Supreme Court's epochal decision in Brown v Board of Education (1954), the nation was forced to abandon its support of segregation and discrimination, and to begin to address the pervasive and stubborn barriers to full participation by minorities and women in American life. Institutions, attitudes, and behavior had to be changed in ways that allowed previously excluded to make their contribution to society.

In 1961, affirmative action was adopted as public policy to assure the full participation of minorities and women in the job market. "Affirmative action" today has many meanings, but essentially, it defines a set of special measures that take race and gender into account when making decisions on hiring, promotion, and other aspects of employment. The consideration of such factors certainly is not new to America experience. What is different about affirmative action, however, is that the use of personal characteristics is a device to assure equal job opportunity for the specially identified groups, rather than a weapon to exclude them.

B. Status of Minorities and Women

The need for affirmative action is reflected in the continuing disparity between the economic status of minorities, women, and majority group men. A brief summary of recent evidence on economic inequality might be instructive.

1. Black Employment and Income

In late 1986, there were 12,720 thousand black workers in the civilian labor force; 10,899 thousand were employed and 1,820 thousand were unemployed. The total civilian labor force included 118,654 thousand workers, of whom 110,371 thousand were employed, and 8,283 thousand were unemployed. Thus, black workers accounted for 10.7 percent of the labor force, 9.9 percent of those employed, and 22.0 percent of those unemployed.

The inability to find and keep work has long been a pervasive and persistent problem in the black community. The unemployment rate among black workers has been at, or above 10 percent for 13 of the last 20 years, but has not reached that level among white at any time during the postwar period.

Unemployment among black youth, higher than 20 percent each year since the early 1960s, now stands close to 40 percent.

Black workers in the economy are like the caboose on a train. When the train speeds up, so does the caboose; and when the train slows down, the caboose does likewise. But in the normal course of events, the caboose remains far behind the engine. When the economy expands rapidly, black employment growth speeds up, but when an economic downturn occurs, black unemployment leads the downward spiral.

For example, during the 1981-82 recession, from July 1981 through December 1982, black employment dropped by 150,000 or 9.1 percent, while total employment feel by 1.5 million, or 1.6 percent.

Similarly, during the recovery and expansion, the period from late 1982 through early 1986, black employment spurted ahead by 17.1 percent, compared to employment growth of 9.9 percent among all workers. But the residue of past unemployment has accumulated over time, and as a result, black unemployment rate was 1.89 times higher than that of others at the depth of 1981-82 recession, but was 2.14 times higher in early 1986 - four years after continuous economic growth!

Persistent unemployment helps explain why black workers drop out of the labor market faster and earlier than other workers, and why they delay their labor market entry longer. The labor force participation rate, the most general measure of labor market activity, sharply declined among black men since 1970. Dropping out of the labor force is most prevalent among the less educated and among workers eligible for social security and disability programs.

When employed, black workers are heavily concentrated in blue collar (36 percent) and service jobs (23 percent), but this occupational distribution has changed markedly over time. For example, only 13 percent of employed black workers were in white collar jobs in 1960, but 29 percent were so employed in 1980. Similarly, 15 percent of black employees, mostly women, were private household workers in 1960, but twenty years later, only three percent held such jobs. The growth in white collar employment largely reflects the entry of black women into clerical jobs, but black employment in professional, technical, and managerial jobs also grew faster than the black workforce.

Less change occurred in the industry location of black workers, but during the past two decades, they increased their share of employment in manufacturing, professional and related services, and public administration. At the same time, they lost ground in construction, while holding their own trade and the financial sector.

The ability to find and keep a job significantly influences earnings and family income. Weekly earnings for fully employed black males are about 73 percent of their white counter-parts, while fully employed black women are at a parity with white women (about 95 percent). But this comparison conceals some important differences in labor market experience among some segments of the black workforce.

For example, black adult men are nearly twice as likely as white men to hold part-time jobs and black women are about one-third more likely than white women to work part-time. This work experience, coupled with the higher unemployment and lower labor force participation of black workers, depresses their income. Thus, in 1984, the median income of black families was $15,432, or about half the income of the average white family. Only when both husband and wife worked full-time, year round, did black family income approach that among white families (87.6 percent). Work, not wealth, is the bedrock of the black middle class, and employment is the sine qua non of economic security.

Changes in the composition of black families reduced income gains in recent years. In the mid-1960s, about one-fourth of black families were headed by single women; today, that ratio approaches one-half. Two-thirds of such families are poor. If families headed by single women are excluded from comparison, the black community would show greater income gains compared with white families since 1965. But even then a significant gap in family income between the two groups would still exist.

2. Hispanics in the Labor Market

In late 1986, there were 8,244 thousand person of Hispanic origin in the labor force, of whom 7,461 thousand were employed, and 783 thousand, or 9.5 percent were unemployed. In comparison with the general population, the Hispanic economic position has long shown substantial disadvantage. In 1985, for example, while median family income for the total population was $27,735, median

Hispanic family income was $19,027. Hispanics as a group fall between black and white families in income, although Puerto Ricans show lower income than black families. Moreover, during the past decade, Hispanic family income, like that among black families, has not improved significantly relative to the income of white families.

Unemployment is a common experience for many Hispanic workers. Generally, the Hispanic unemployment rate is about 60 percent higher than that for white workers, and is sharply higher among youth than adults. Labor force participation also differs sharply among the population groups.

For example, in 1985, the labor force participation rate among youth aged 16-19, was 54.5 percent, but was 57.5 percent for white youth, 44.5 percent for Hispanic youth, and 41.2 percent for Black youth. Mexican Americans had the highest participation rate, 47.9 percent, followed by Cubans with 43.5 percent, and Puerto Ricans with the lowest rate of all at 36.3 percent.

Hispanics also show evidence of underemployment, especially as compared with white workers. The Hispanic worker, disproportionately male, is more likely than white workers to be employed intermittently, to accept part-time work when a full time job is preferred, and to hold marginal jobs in both white collar and blue collar occupations. In contrast to common perceptions, relatively few Hispanics work in agriculture: only 7 percent of Mexican Americans, and even less than that among other Hispanic groups.

To be sure, the status of Hispanics in the labor market is influenced by their educational attainment, which tends to be lower than for the population as a whole; and their relative youth, an average of age 20, compared to age 29 for the population as a whole. But labor market discrimination plays a substantial role in limiting the employment opportunities of Hispanic workers, as reported by the U.S. Commission on Civil Rights in its comprehensive report on Hispanic Unemployment in 1982.

3. Women in the Labor Market

Fifty three million women, nearly 56 percent of all aged 16 and over, were in the labor force in late 1986. Of that number, 49,321 thousand were employed, and 3,690, or 7.0 percent were unemployed.

More than 2 of every 5 workers (44 percent) in the labor force today are women, and their participation is substantial in each of the major population groups. Almost half of all black workers (49 percent) are women; 43 percent of white workers are women; as are 40 percent of Hispanic workers.

The growth in the labor force participation of women is the most dramatic change in American society during the past quarter century. Women accounted for three-fifths of the increase in the civilian labor force during the past decade: 13.7 million women, and 8.4 million men.

But the expanded participation of women in the labor force has not been accompanied by a significant improvement in their income position. Women still earn only about 56 percent of the income of men, a ratio that remained virtually unchanged during the past decade. Women are concentrated in a relatively few, low paying occupations, and are the largest part of the workforce in the traditionally "female" jobs. In 1983, they were 80 percent of all administrative support (including clerical) workers, but only 8 percent of precision production, craft, and repair workers; 70 percent of retail sales workers; and 32 percent of managers, administrators, and executives -- jobs in which they typically supervised other women.

Women have achieved some progress in the job market, as reflected in their entry into the skilled trades, and into other predominantly male professions such as law, medicine, engineering, and financial management. Indeed, the growth of female employment in such fields far outstrips the growth rate of women in the labor force. Still, women remain heavily underrepresented in the broadest range of male-dominated, high wage occupations, and minority group women, in particular, show the resulting disadvantage.

The limited gains women have made in the labor market helps explain why they continue to be concentrated among the poor. In 1985, women represented 61.3 percent of all persons aged 16 and over who had incomes below the poverty level. The proportion of poor families maintained by women was 48.1 percent, up from 43 percent in 1981. Nearly 73 percent of poor black families, which included 3.2 million children, were headed by women. Forty six percent of Hispanic families, including one million children, and

37 percent of white families, including 3.4 million children were similarly situated.

C. The Rationale for Affirmative Action

The unequal economic status of minorities, women, and majority group men is not solely the result of current discrimination in the labor market, and would not disappear immediately if discrimination ceased to exist. Interpersonal differences in occupation status, income, and other measures of economic well being reflect a broad range of personal characteristics including, but not limited to personal preferences, age, education, attitudes, and values. Observed differences among groups in economic status also reflect the present effects of past discrimination against members of particular groups based on their race, sex, and other personal characteristics. Thus, although current acts of discrimination might be widely condemned as incompatible with contemporary American values, and punished because they are unlawful, the mere enforcement of laws against discriminatory behavior will not assure equal opportunity. Something more is required to secure and protect the right of all persons to participate fully in the economy.

As President Lyndon B. Johnson said in 1965: "You do not take a person who for years has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'You are free to compete with all others', and still believe (that you are) being fair. It is not enough just to open the gates of opportunity. All of our citizens must have the ability to walk through those gates. This is the next and more profound stage of the battle for civil rights...."

Supreme Court Justice Harry Blackmun recognized the same imperative when he observed "In order to get beyond racism we must first take account of race."

The use of racial and gender identification for inclusionary rather than exclusionary purposes altered the nature of antidiscrimination policy. The rationale is that affirmative action helps make social conditions more just and the distribution of important social goods and opportunities more equal and fair. Professor Richard Wasserstrom of the Department of Philosophy, University of California, Santa Cruz captured the essence of the problem when he observed. "--- we are living in a society in which a person's race (and sex) is a socially significant and important characteristic.[1] It affects both the way the individual looks at the world and the way the world looks at the individual. In our society, to be black is to be at a disadvantage in terms of virtually every conceivable measure of success or satisfaction--be it economic, political, or social. Viewed from the perspective of our social realities, race (and gender) in our world is taken into account in a certain way in the context of a specific set of institutional arrangements and a specific ideology which together create and maintain a system of objectionable, oppressive institutions and unwarranted beliefs and attitudes toward those who are (racial minority and female) and in favor of those who are (white and male)."

Affirmative action is aimed at the entrenched attitudes, behavior, and institutional arrangements that perpetuate the denial of equal opportunity to minorities and women. It is based on the reality that in the absence of conscious, deliberate efforts to assure equal opportunity, the legacy of past discrimination will be reinforced by contemporary actions. The expectation is that by pursuing the special measures of affirmative action temporarily, attitudes, values, and behavior will change in ways that redress the balance against population groups previously excluded from full participation in the job market.

IV. IMPLEMENTING AFFIRMATIVE ACTION

When President John F. Kennedy issued Executive Order 10925, reauthorizing the federal government's program to assure nondiscrimination in employment among government contractors, he built upon the record established by his three immediate predecessors. Beginning with President Franklin D. Roosevelt's Fair Employment Practices Commission, three successive agencies attempted to prohibit discriminatory practices in firms doing business with the federal government before Kennedy created the President's Committee for Equal Employment Opportunity (PCEEO). The experience of the previous agencies was not good, however, and President Kennedy's civil rights advisers recommended a more proactive policy aimed at the root cause of continuing discrimination.[2]

Indeed, the need for a stronger program than that implemented before 1960 was signaled in the final report of President Eisenhower's Committee on Government Contracts, chaired by then Vice President, Richard M. Nixon. The Committee's report concluded:

> 1. Overt discrimination in the sense that an employer actually refuses to hire solely because of race, religion--is not as prevalent as in generally believed. To a greater degree, the indifference of employers to establishing a positive policy of non-discrimination hinders qualified applicants and employees from being hired and promoted on the basis of equality.
>
> The direct result of such indifference is that schools, training institutions, recruitment and referral sources follow the pattern set by industry. Employment sources do not normally supply job applicants regardless of race, color, religion, or national origin unless asked to do so by employers.

Executive Order 10925 introduced affirmative action as the device to get at the institutional racism or institutional sexism--patterns of past discrimination built into institutional systems--described in the Nixon Committee's report. Affirmative action was a term drawn from the field of labor management relations, where employers found guilty of unfair labor practices regarding employee attempts to organize could be required to take steps to assure a work environment free of threats against future employee organizing activities.

As interpreted at that time, the affirmative action requirement for government contractors meant special recruitment and pre-employment assessment policies aimed at producing more equal opportunity for minorities to compete for available jobs.

The prototype for an affirmative action program was the agreement signed by the Lockheed aircraft company in 1961 after a complaint against its employment practices was filed with PCEEO by the NAACP. The company agreed to take special efforts to recruit and employ black workers in both white and blue collar jobs. Most importantly for future policy implementation, the Company also agreed to record, and submit to the Committee periodic reports on the number of employees hired, by race, sex, and occupational group.

A number of firms signed similar agreements, called Plans for Progress, and proceeded to alter their hiring policies in order to increase black employment. The voluntary program, however, eclipsed the Executive Order's enforcement activity aimed at non-signatory employers. Still, the special efforts seemed to produce modest gains. The 103 Plans for Progress companies increased the percentage of black employees from 5.1 percent to 5.7 percent within the first two years. That represented a gain of 40,938 of the companies' 341,734 vacancies--more than double the representation of black workers among those hired before Plans for Progress.

Toward Goals and Timetables

When Title VII of the Civil Rights Act of 1964 was passed, the administration of the federal government's antidiscrimination contractor program was reorganized. The President's Committee on Equal Employment Opportunity was abolished, and its responsibilities were transferred to the U.S. Department of Labor's Division of Labor Standards. A new agency, the Office of Federal Contract Compliance (OFCC), was created to enforce the new Executive Order 11246.

The new Office proceeded to develop regulations and procedures to assure equal job opportunity among government contractors. But the special problems with minority employment in the construction industry persisted with increased difficulty. Such problems were exacerbated by frequent demonstrations by civil rights activists in local communities where government supported construction proceeded with virtually all-white workers in all-black neighborhoods. In an effort to generate greater responsiveness by construction contractors toward equal employment, OFCC introduced the requirement for employment goals and timetables as a device for measuring compliance with the Executive Order.

The goals and timetables were part of the Philadelphia Plan, an agreement with contractors performing federally assisted construction in that city. The plan stated explicitly that the goals were not to be considered quotas, but were guideposts for measuring the contractor's progress toward equal opportunity. The maximum requirement of the government's program was good faith effort to achieve the goals. There was no requirement to hire the unqualified, or to discriminate against non-minorities. What was important was the process employers used to integrate their workforce. If an employer failed to meet the goals and timetables, the response of the government typically was to investigate the efforts used to achieve the goals. Although OFCC retained ultimate authority to withdraw a contract, or refuse to award a future contract to an employer in noncompliance, that sanction was not applied until a decade later when Secretary of Labor, Ray Marshall withdrew a contract from a trucking company.

Goals and timetables were quickly introduced into contracts in non-construction industries, and were expanded to cover women under Revised order number 4 issued in 1971. This enforcement device sparked widespread and vociferous opposition. Some critics refused to concede that goals and timetables were not synonymous with quotas, despite clear statements to the contrary in both the Executive Order and its implementing regulations.

One line of attack against goals and timetables focuses on their attempt to compare the employment of minorities and women in various occupations to the presence of such groups in the local population. Thomas Sowell, for example, argues that to elevate employment and population parity to a legitimate public policy goal is to make statistical variance a federal offense.[3] He further observed that in no nation, at no time has there ever been parity between the number of persons of various racial, ethnic, or religious groups in the population, and their presence in all occupations, industries, and other classifications of employment. To suggest that statistical parity should be the goal of equal opportunity, according to their criticism, is to make goals synonymous with quotas, despite protestation to the contrary.

But another critic of affirmative action, Glen Loury of the Kennedy School of Government, Harvard suggests that numerical information on racial and sexual employment practices can be useful in identifying firms that might warrant closer scrutiny as possible illegal discrimination.[4] Recognizing the limitations of a pure "color-blind" position as the foundation for EEO enforcement, Loury concedes the value in comparing an employer's complement of minorities and women with their presence in the labor market.

But even Loury is loathe to adopt goals and timetables as a device for hiring or promoting members of the legally protected groups except in response to a finding of discrimination. In his view, to use goals and timetables except as a remedy against discrimination is to confer benefits on some minorities and women who are not entitled to such rewards. His view, then, is similar to Sowell's in rejecting the notion that a statistical disparity between a group's employment and population representation is a legitimate basis for setting goals to achieve equal opportunity.

While critics continue to debate whether goals are in fact quotas, employers have adopted the affirmative action device as a regular part of their personnel practices. The DuPont Corporation, for example, sets internal hiring and promotion goals higher than those suggested by OFCC. The rationale for the policy is that the Company pursues management by objectives and considers goals and timetables for equal job opportunity simply a useful tool for measuring results.

Similarly, a statement submitted to the Study Group by the National Association of Manufacturers observed:

> "Industry does not believe that numerical goals for minority inclusion in the workforce, by themselves, constitute quotas. Business, particularly big business, sets goals and timetables for every aspect of its operations--profits, capital investment, productivity increases, and promotional potential for individuals. Setting goals and timetables for minority and female participation is a way of measuring progress and focusing on potential discrimination."

To be effective, however, the implementation of affirmative action including the skillful use of goals and timetables, requires strong support from the chief executive and careful staff training and technical assistance. As reported by Arthur Greene of the Connecticut Commission on Human Rights and Opportunities; "---Governor O'Neill convened the agency heads in order to have them briefed on the training and to emphasize the importance of affirmative action. Training and technical assistance sessions are provided in group as well as in individual sessions for affirmative action officers on an on-going basis."

But goals and timetables apparently have not been used as extensively as generally perceived. Edward Jones, an organizational development consultant informed the Study Group that his research among large corporations suggested that hiring goals were most prevalent for entry level jobs, but not as important for employee upgrading. As a result, Jones believes many minorities and women who were hired during the emphasis on affirmative action during the 1970s are now stuck in mid- or lower level jobs with few prospects for upward mobility.

What seems apparent is that in the wake of increased criticism of goals and timetables by senior officials of the federal government, including the Attorney General, the Chairman of the U.S. Commission on Civil Rights, and others, some business firms have abandoned their focus on numerical measures of compliance with antidiscrimination policies since 1981. Others, especially large firms, continue to adhere to goals and timetables, but many have integrated EEO objectives into regular human resource development strategies. The result is a widespread perception that affirmative action is less important today than before--a perception reinforced by the virtual silence of senior corporate executives on the importance of equal job opportunity and affirmative action.

Christine Kramer, Director, Affirmative Action Planning at CBS observed:

> "There is no question in my mind, having been in this field for 15 years, that affirmative action has changed significantly. One of the things that I find most frustrating is that (some) larger companies continue to use entry level hiring as a copout for meeting their obligations under the Executive Order Program. A lot of us tried to begin to institutionalize affirmative action with a long-range goal of doing ourselves out of jobs so that there wouldn't be a need for such a function, and that worked in a lot of companies, even in specific divisions and parts of companies. But I do see that changing."

Other Implementation Issues

Corporate and legal representatives with experience in managing affirmative action express a variety of views about the difficulties in achieving results. Jeffrey Norris, an attorney with the Equal Employment Advisory Council says "--- the source of the problem is not the Executive Order's language or the Executive Order's policy. (Even) the regulations themselves are drafted with enough flexibility ---. The source of the problem is that OFCCP has tried to impose on all corporations a uniform system of standards. Every corporation is different and every (affirmative action) program must be different."

One of the major differences affecting implementation today is structural change in the American economy. Employment is shifting out of manufacturing and into services; the energy industries are losing jobs because of reduced oil prices; agricultural production is down and many firms have gone out of business; and imports are threatening the domestic markets of many consumer and industrial goods suppliers. All of these developments worsen the prospects for successful affirmative action plans. Christine Kramer of CBS commented:

> "Handling affirmative action in a workforce that is clearly retracting, where there is no expansion of any kind, is very different from the normal operating style. I did that at (a major computer manufacturer in the Midwest), and found myself doing damage control, i.e., trying to salvage the program everyone worked so hard to put into place in the beginning. --- The company management took much longer to decide who was going and who was staying and to take other steps to avoid having a reduction in force. --- One of the divisions had a seniority policy, although (if) was not unionized. Seniority was used as the primary factor in layoffs and it decimated the affirmative action plan in that division."

Even a program focusing largely on hiring should be designed carefully to assure good promotion potential for new employees brought in under affirmative action. Shannon Eaton, Director of Human Resources at Union Mutual Insurance Company in Portland, Maine observed: "Our program --- did outreach in terms of introducing skills with people ---. We had people who would go to local vocational schools and --- advise on the kinds of secretarial, entry skills we're looking for. We reached an agreement with those schools that we would go to the class and state we were involved in X number of minority disadvantaged people. Those kinds of programs (helped) produce a pool of qualified people to meet our needs. Then we had to do our part, which was to promote, advance, train internally to the point where (the person) didn't have to be trained several timer."

Affirmative Action Under Title VII

Title VII of the Civil Rights Act of 1964, as amended, confers on the U.S. Equal Employment Opportunity Commission the authority to investigate charges of discrimination, and if probable cause is found, to con??leate. The Act gave the federal courts broad power to issue orders once unlawful employment practices were found. Affirmative action was among the remedies the courts were authorized to require. This provision of Title VII has spawned a number of judicial orders with major provisions allocating job opportunities to minorities and women.[5] Courts have ordered unions to grant membership to minority group applicants; have ordered employers to hire or promote equal numbers of minority and non-minority employees up to a certain percentage of the workforce; and ordered public and private employers to adopt special recruitment and testing policies designed to assure opportunities for minorities and women to compete fore jobs. These requirements have been upheld by the U.S. Supreme Court in a series of cases, including the most recent decisions handed down in Summer 1986.

Armed with the authority approved by the Courts, EEOC adopted "creative rulemaking" during the 1970s to establish affirmative action procedures in employee selection. Affirmative action was also negotiated with employers who signed consent decrees. Among the most extensive uses of the practice were the provisions included in the consent decrees signed by AT&T, General Motors, and the U.S. Steel Company.

Attempts by EEOC to go beyond an exclusive focus on the investigation of individual complaints to a broader assault on discrimination included the creation of a national program division in 1976. The division targeted on several major multiplant companies, such as IBM and Sears, Roebuck, in an attempt to achieve major gains in minority and female employment, with limited staff resources. The assumption was that economies of scale would be achieved by focusing major staff resources on a few large firms in the hope that success with them would encourage other firms voluntarily to strengthen their affirmative action policies.

EEOC's strategy, however, was not entirely successful. Sears, Roebuck challenged EEOC's charge of discrimination and launched a long, costly legal battle against the agency. The case was finally settled in 1984 very much in Sears' favor. Similarly, IBM proved that its policies and practices on EEO were among the most progressive in the nation, and as a result, withstood the EEOC charges without any significant change in its affirmative action program.

Today, EEOC no longer plays a pioneering role in defining creative ways to implement affirmative action. The Commission's leadership in philosophically opposed to the use of goals and timetables, and has sought alternative enforcement measures. But in the wake of the U.S. Supreme Court's Summer 1986 trilogy of cases upholding the use of numerical preferences under certain conditions, EEOC has announced that goals and timetables will again be approved in consent decrees and settlement agreements.

Non-government Affirmative Action Efforts

An important feature of the current scene is the action of private voluntary organizations to use community based support to persuade public and private employers to adopt affirmative action measures beneficial to minorities and women. Such actions often include a threat to withhold purchasing power from specific companies that refuse to adopt policies and programs to expand minority employment and in other ways broaden their support for minority economic well being. Prominent among efforts of this type were the selective patronage campaigns launched by the Rev. Leon H. Sullivan and 400 ministers in Philadelphia during the early 1960s, the consumer boycotts initiated by Operation PUSH in Chicago and other cities during the 1970s, and the "reciprocal trade" agreements negotiated by the NAACP with several major entertainment and public utility firms during the past six years.

Similar affirmative action goals have been pursued through the political process most often in cities where minorities and women have organized to bring pressure on local governments to increase employment among members of the groups, and to expand government purchases of goods and services sold by minority and female businesses. A number of state and local governments have adopted set-aside programs that assure a proportion of all public purchases from minority and female firms.

Private voluntary efforts in pursuit of affirmative action are important for several reasons. First, they often require target employers to go beyond the goals agreed upon by government agencies as part of an approved affirmative action plan. Employers have little choice in altering their position in response to a serious threat of losing an important consumer market, or serious damage to the firm's public image. Second, the actions of voluntary community organizations can disturb the competitive position of firms in the labor market. Two firms in the same labor market might have very different product market characteristics, and thus, be subject to different consumer group pressures. Such differences can well disturb the prospects for affirmative action progress in some firms which, while not the object of consumer group pressure, might have an unfavorable record on the employment of minorities and women.

Fred Rasheed, director of economic development for the NAACP considers such voluntary efforts a critical supplement to affirmative action plans. According to Rasheed, "--- companies will respond better to the black community when the margin of profit is at stake. It is in the self interest of the black consumer to spend his dollars where he can work, and with firms willing to return something to the black community."

Similarly, the Rev. Jesse Jackson, former president of PUSH, considers the "consumer covenants" agreed to by his organization and target companies a form of trade reciprocity in which a quid pro quo is reached between target firms and black purchasers. Such agreements, however, are self enforcing and have no legal standing. Their effectiveness depends on the sincerity of the target firm's management and its determination to carry through on the commitments made to the community. In that sense, such agreements differ little from government approved affirmative action plans. In both cases, management desire to see results from affirmative action is critical to success.

Apprenticeship Outreach

Another voluntary effort aimed at an affirmative action goal was the apprenticeship outreach strategy developed in the construction industry. Outreach programs worked on the supply side in contrast to the Philadelphia Plan which focused exclusively on generating a demand for minority construction workers. Outreach programs, conducted mainly by the National

Urban League, the Recruitment and Training Program, and the Negro Trade Union Leadership Council during the 1970s, recruited potential minority group apprentices and helped strengthen their basic skills and knowledge of the craft so they would have a better chance to pass the apprenticeship entry exams. Such programs worked closely with the trade union movement, and enjoyed strong funding support from the U.S. Department of Labor.

But Herbert Hill of the University of Wisconsin, and formerly labor director of the NAACP argues that discrimination in the construction industry was too deep seated to yield to voluntary measures like the outreach programs.[7] The judicial docket is replete with cases in which building trades unions have been found guilty of discrimination against minorities and women. Indeed, one of the recent U.S. Supreme Court decisions on affirmative action involved a craft union that lost the case largely because of its long standing discrimination against black workers, and its refusal to adopt and implement an affirmative action plan.[8]

It is difficult to compare the effectiveness of enforcement measures, like the Philadelphia Plan, with voluntary outreach efforts in bringing equal job opportunity into the construction industry. Undoubtedly both played a role in generating change reflected in the larger numbers of minorities and women now working in the industry. But the limited growth in construction industry employment during the 1970s, and the deeply entrenched traditions affecting entry into the field even now make the construction industry one of the most serious challenges for affirmative action.

V. IMPACT OF AFFIRMATIVE ACTION

One of the most contentious issues concerning affirmative action is its impact both on the groups that historically suffered from discrimination, and on other groups whose employment expectations are inevitably affected by the disturbance of the status quo when equal opportunity is introduced. Efforts to widen job opportunities for minorities and women have sparked staunch resistance in many quarters, often fueled by antecdotes about "reverse discrimination." The impact of affirmative action on nonminority men, and even on the intended beneficiaries of the policy themselves has been discussed frequently in the scholarly literature, and in the public debate over affirmative action policy.

Professor William J. Wilson, a sociologist at the University of Chicago, gained wide attention when his 1978 book, The Declining Significance of Race, argued that affirmative action had benefitted only the least disadvantaged segments of the black community.[9] In his view, embellished and reiterated numerous times in frequent debate, the economic and social conditions confronting persistently poor minorities will not yield to a strategy like affirmative action which, by its nature, benefits only those who have marketable skills, but have been denied job opportunity only because of discrimination.

Similarly, Professor Thomas Sowell has criticized civil rights leaders for supporting affirmative action without realizing that, in his view, such measures hurt the disadvantaged.[10] His position is based on the observation that affirmative action programs seem to concentrate on jobs above the minimum wage, and benefit minorities and women with better than average levels of education and labor market experience. Sowell believes the widening gap in personal income within the black community is evidence that affirmative action is biased toward the more advantaged groups. He argues that the occupational gains achieved by minorities and women during the 1970s resulted from factors such as economic growth, strong labor demand, and improved educational attainment among minority group youth, rather than civil rights legislation and affirmative action policy.

Professor Glenn C. Loury of Harvard University's Kennedy School of Government goes a step beyond Wilson and Sowell's criticisms by suggesting that affirmative action generates a "self-reinforcing cycle of negative expectation."[11] He thinks minorities and women hired or promoted in an environment of affirmative action develop doubts about their ability to compete effectively on their own. According to Loury, they will doubt their competence to perform in an open system based strictly on merit, and equally important, will be viewed by others as less capable because they gained their position through preferential treatment. Such negative attitudes feed on themselves and make it difficult for minorities and women ever to be accepted on equal terms.

There is enough anecdotal evidence to lend some credence to these criticisms of affirmative action, but the full story is considerably more complicated. As a device to protect equal job opportunity, affirmative action is aimed at discriminatory behavior, and must take as given, prevailing economic and labor force conditions. Neither the origin nor history of affirmative action suggest that it ever was intended to address problems of structural unemployment which accounts for much of the gap in unemployment between minorities and others. The fact that the black youth unemployment rate continues to exceed, by several times, that of white youth and adults; that an increasing proportion of black families are headed by single women, many of whom are poor; and that nearly one third of all black families continue to live in poverty, says less about the impact of affirmative action policy than the ineffectiveness of many other social and economic policies aimed at such problems. Especially important in this connection, is that efforts to achieve full employment and to reduce poverty are central to the reduction of economic inequality.

As for self-doubts among minorities and women who benefit from affirmative action, the extent of such attitudes is not clear. There is little evidence from surveys of employees in large organizations to support the view that minorities and women feel in any way inferior because of affirmative action.[12] In fact, the reverse might be so because of the common educational experience in college and graduate school now shared by many minorities, women, and white males. By competing on equal terms in the classroom, members of such groups acquire knowledge and confidence about themselves and their relationship with others that should be transferred to the corporate office. Moreover, since affirmative action was introduced, performance assessment has been strengthened in many forms, and as a result, a more objective view of relative success on the job is now available. Good performance evaluation should minimize the tendency of either minorities, women, or nonminorities to question whether an individual's productive contribution is based on merit or on preferential treatment.

Aggregate Measures of Impact

The bulk of the statistical evidence supports the conclusion that the labor market position of minorities improved more rapidly since 1971 than might have been expected from earlier trends, general business conditions, or the relative educational attainment of minorities. But female earnings have not increased significantly relative to males. Whether such stability at a time of rising female labor force participation would have been predicted from pre 1970 experience has not been carefully studied.[13]

To discern the impact of affirmative action on the observed trends, the effects of OFCC and EEOC must be measured. Such research, while not conclusive, suggests that OFCC has been a factor leading toward higher levels of employment of minorities than might have occurred without the agency, but that EEOC's impact is more difficult to measure.

Statistical studies of the impact of affirmative action often suffer from the lack of careful specification of precisely what in the operation of OFCC or EEOC would produce higher levels of employment for minorities and women than otherwise might exist. But if the burden of proof is lowered to a level more commensurate with limitations imposed by incomplete data, more positive results of affirmative action emerge.

For example, a study by Finis Welch and James Smith, two Rand Corporation economists thought to be unsympathetic to affirmative action, concluded that "affirmative action has resulted in a radical reshuffling of black jobs in the labor force."[14] They found that affirmative action shifted black male employment towards EEOC covered firms and industries, and that it resulted in an increase in the representation of black male workers in the managerial and professional jobs in such firms. As a result, the author wrote that "there has been a short-lived, but significant positive effect on wages of younger black workers," and "the main beneficiaries of affirmative action - in terms of income - have been young, college educated blacks."

An unreleased study conducted by OFCCP in 1984 concluded that companies subject to Executive Order 11246 from 1974-1980 showed more favorable employment gains for minorities and women than nonfederal contractors who, presumably, were obligated only to adhere to nondiscrimination - a less effective device for assuring equal job opportunity.[15] Specifically, the 77,000 companies reviewed had over 20 million employees. During the six year period, minority employment increased 20.1 percent and female compared to total employment growth of only 3 percent. In noncontractor companies, minority employment grew 12.3 percent, and female employment, 2.2 percent with total employment growth of 8.2 percent during the same time period. Moreover, the federal contractors had a smaller proportion of minority and female employees in lower-paying jobs than noncontractors, and contractors showed significantly faster growth of minorities and women into managerial jobs.

Professor Jonathan Leonard of the University of California, Berkeley conducted one of the best conceived and thorough studies of the impact of Executive Order and Title VII on minority and female employment.[16] He concluded that while the OFCC program helped black workers, its impact on nonblack minorities and women was less conclusive. He also found that class action litigation under Title VII had a relatively greater impact than affirmative action on black employment. Leonard's data, like the OFCCP study, showed the greatest gains have been in the higher paying managerial, professional, and craft occupations, although gains were recorded across a wide range of fields. Significant gains were noted among black bus drivers and computer operators, as well as attorneys and psychologists.

A recent study conducted by the Bureau of National Affairs found that among 114 employers in a cross-section of U.S. industry, women had achieved at least first-level management in almost 9 out of 10 firms, and executive positions in about half of the responding companies.[17] Female gains exceeded similar progress among minority employees. Similarly, in 1986 the Korn/Ferry executive search firm conducted a seven year follow-up study of senior-level executives in a broad range of industries. The results showed that of more than 1,300 respondents, 2 percent of the senior executives were women, a ratio that while low, was still several times the level observed in 1979. But there was little representation of minorities in senior positions, (less than one percent), a status unchanged over the seven year period. Minorities, however, showed improved representation in middle management. The Korn/Ferry study suggests that despite government efforts to promote affirmative action, the impact on the race and sex composition of the executive suite has been minimal.

Individual Company Results

The impact of affirmative action on employment might best be observed by looking at the experience of specific companies. For example, in 1973, AT&T entered into a six-year consent decree with EEOC to correct previous discriminatory employment practices.[18] Since that time, the company has registered significant gains in minority and female employment, as shown in the following table:

Percent of Employees in AT&T Occupations

	1972	1982
Minorities in Management	4.6	13.1
Women in Management	33.3	39.6
Minorities in Craft Jobs	8.4	14.0
Women in Crafts	2.8	12.3
Males in Clerical	4.1	11.4

These gains were the direct result of the Company's revised employee recruitment, selection, and assessment procedures adopted under the consent decree. There is no explanation, others than affirmative action, for these gains, and no other company in the public utility industries can match AT&T's record of minority and female employment over the 10 year period.

Other major companies that showed significant progress toward diversifying their workforce under affirmative action were:

1. IBM, whose minority employment in management increased from 512 in 1971 to 2,032 in 1980, while female employment rose from 471 to 2,350 in similar jobs during the same period;
2. Levi Strauss, whose minority group employment rose from 33 percent in 1972 to 51.5 percent in 1980; and
3. Sears Roebuck, whose Hispanic representation in management, professional, technical, operative, and craft positions rose from 8.1 percent in 1966 to 25.2 percent in 1981.

In 1985, Black Enterprise magazine conducted a survey of employment practices of American industry, and on the basis of their findings, selected the 25 "best" equal opportunity employers.[19] The 25 firms were selected through a process that included an assessment of their employment practices by their black employees.

About one third of the companies (8) were in the manufacturing/high technology industries, another third (9) were consumer products firms, and the remainder were in the services or communication industries. Their employment profiles in 1985 showed the following participation rates for minority and female employees:

Percentage of all Employees

	Minority	Female
Consumer Products	25.3	34.9
Manufacturing/High Tech.	41.6	23.5
Services, Communications	33.7	45.3

In each case, the minority and female composition of the workforce in the selected companies greatly exceeded the representation of such workers in the respective industries.

Several important features of these companies have implications for their employment profiles. All are large companies with over 10,000 employees; 3 of the manufacturing firms, General Electric, General Motors, and IBM had more than 200,000 employees. The large size of the firms made them highly visible targets for EEO enforcement, and indeed several, including G.M., G.E., and AT&T had been selected by EEOC for special review of their employment practices during the 1970s.

Second, more than half of the firms are located in areas heavily populated by minority group workers, and had long employed them, at least in entry level jobs. The three automobile manufacturers on the list, G.M., Ford, and Chrysilter, had employed black workers for nearly 40 years, having opened their doors to minorities and women during the labor shortages of World War II. These firms could build on their track record to expand and upgrade minority and female employment under affirmative action programs.

But although the selected companies showed better than average records on equal employment, their minority employees felt that not enough was being done to implement affirmative action, especially for promotions.

According to 56 percent of the respondents, relationships between black workers and their employers have not improved. This opinion was widely shared, despite general satisfaction with the companies' compensation policies, performance evaluations, and opportunities for training and development.

The equal employment gains registered by these and other private firms reflect the results of changes in personnel policies and procedures under affirmative action. Such internal operational changes are among the most important, and pervasive impacts of affirmative action in the business sector. For example, in 1983, a private citizen's group on civil rights conducted a survey to learn how private employers had adjusted to the increased enforcement of affirmative action during the 1970s.[20] Of the 200 companies surveyed, almost 90 percent reported newly established or improved hiring procedures and standards; 85.7 percent had revised procedures for promotions; and 82.1 percent had better standards and procedures for employee performance reviews. About nine out of 10 respondents said affirmative action helped their companies better identify relevant qualifications for certain jobs and 82.1 percent said the AAP strengthened outreach and recruitment processes. These, and other results of affirmative action had a positive effect on employee morale, job satisfaction, and labor-management relations, according to company officials.

Impact of Affirmative Action: The Public Sector

Executive Order 10925, issued in 1961, established a policy of affirmative action for federal agencies, and gave the President's Committee on Equal Employment Opportunity the responsibility to monitor the plans and progress of such agencies in employing minorities and women. Title VII of the Civil Rights Act of 1964 transferred to the Civil Service Commission the responsibility for administering the federal EEO programs, but until the passage of the Equal Employment Opportunity Act of 1972 excluded state and local governments.

Under Title VI of the Civil Rights Act, federal agencies that provided financial assistance to state and local governments in the form of loans, grants, guarantees, and revenue sharing were required to assure that such funds were used in a nondiscriminatory way. This policy led federal agencies to adopt affirmative action requirements for state and local governments.

By 1970, however, about two dozen states and localities had adopted their own antidiscrimination policies and had created agencies to enforce such requirements. Some of the strongest agencies, including those for the states of Connecticut and Michigan, and the cities of New York and Philadelphia, had extensive monitoring and investigatory powers which allowed them not only to correct individual cases of discrimination, but also to promote affirmative action in state and local employment.

A survey conducted by the U.S. Commission on Civil Rights in 1967, and another survey conducted in 1970 by the National Civil Service League showed low participation of minority group employees in state and local agencies, especially those with no service functions dealing with the poor and disadvantaged. The worst records were found in police and fire departments which employed virtually no minorities and women. Widespread use of discriminatory selection and promotion methods, unnecessary educational and experience requirements, and selective announcements of hiring and promotion opportunities were among the major barriers to equal opportunity. Precedent setting court cases challenging such practices affecting protective service workers in Boston, Philadelphia, and Memphis have set new standards now applied in many communities throughout the nation.

Affirmative Action in the Cities

During the past decade, affirmative action has been embraced by many city governments. The extent of such efforts was revealed in a survey of 121 cities conducted by the U.S. Conference of Mayors in Summer 1986.[21] Following are some of the major findings of the survey:

- More than nine of every 10 survey cities voluntarily adopted their affirmative action plans. In seven cities, plans were adopted following a court-approved settlement, and in four cities, the plan was imposed by court order. In 18 cities, there were court findings of past discrimination.
- Affirmative action programs set or improved recruitment standards and procedures in 41 percent of the cities; hiring and promotion standards in almost all cities; and employee performance reviews in about two-thirds of the cities.
- Respondents reported that affirmative action contributed to increased employee job satisfaction.

The Conference of Mayor's survey did not include trends in the profile of city government employment, but other studies shed light on that aspect of equal opportunity. An analysis of data from 1,224 cities with populations of more than 10,000 showed that in 1985, 306 cities employed no black workers, 427 cities had less than one percent, and 540 cities had less than two percent black employees in official/administrative, professional, and protective service jobs.[22] Many of the cities were located in areas with large black labor pools.

State and Local Employment

An earlier study, based on an analysis of EEOC data, showed that in 1980, minority group men accounted for 11.2 percent, and minority group women, 9.8 percent of all full-time state and local government employees. White women comprised 31.2 percent of the state and local workforce. Between 1973 and 1980, there was considerable improvement for women in all but the paraprofessional and clerical jobs where they already were heavily represented. Minorities registered substantial gains in protective service and skilled craft jobs, and more moderate gains in all other occupational categories.

Much of the improvement in the number and occupational distribution of minority and female employees in state and local governments occurred through new hires. Moreover, the improvement seemed concentrated during the years of the late 1970s, suggesting that the adoption and refinement of affirmative action plans began to pay off for local governments at that time.

Ingredients of Success

Achieving success with an affirmative action program requires both sound policies and procedures, and a strong commitment to generate measurable results. The City of Indianapolis and the State of Connecticut have had experiences that are instructive.

Indianapolis signed a consent decree with the federal government in July 1978 and proceeded to put in place a system of recruitment, hiring, training, and promotion designed to expand employment of minorities and women. Goals and timetables were established for major departments of city government, including the protective services. Strong leadership on affirmative action was taken by Mayor William Hudnut, bolstered by the financial and administrative support necessary to achieve results.

The City sponsors extensive training for supervisors to assure their understanding of affirmative action and ways to implement the policy. Efforts are made to sensitize supervisors to the importance of an environment free of racial stereotypes and sexual harassment. Supervisors who do not follow affirmative action guidelines can be demoted. Other positive measures include establishing links with community groups to facilitate better recruitment, sponsoring training programs to help employees prepare for promotions, and targeting minorities and women for assignment to specific jobs in which they are underrepresented. Critics have labeled such efforts reverse discrimination, but according to Mayor Hudnut, linking affirmative action with reverse discrimination "is merely a subterfuge for racism and sexism, and it must be battled at every turn."

The results of the affirmative action plan are partly reflected in the City's employment of minorities in protective services. In 1976, the minority group population in Indianapolis was about 17 percent, but minority employment in the Fire Department was 8 percent, and in the Police Department, 11 percent. Six years after applying special hiring procedures included in the Consent Decree, the percentage of black employees in the Fire Department rose to 13.4 percent and in the Police Department, 14.1 percent. The gains placed black protective service officers in a position where the promotion system should lead to their advancement into senior level management over time.

Affirmative action for state employees in Connecticut was introduced in 1973, following an Executive Order issued by the governor. The state Personnel Department was directed to develop and administer a statewide affirmative action plan. Later legislation passed by the General Assembly required all agencies to develop affirmative action plans according to guidelines developed by the Personnel Department. The state Commission on Human Rights and Opportunities was authorized to approve and monitor agency affirmative action plans.

During the past decade, the Connecticut program has been progressively strengthened by Executive and legislative action. The Commission has promugated policies and procedures for implementing affirmative action. The Governor has strongly identified himself with affirmative action and has expressed his expectation that minorities and women will be accorded all opportunity to be hired and promoted within the state civil service system.

Affirmative action plans are the responsibility of agency directors, but the Commission provides staff training and technical assistance to help the agencies comply with the law. By mid-1986, however, about a third of the state agencies, including a disproportionate number of community colleges, did not have approved plans. Another third had plans either under review, or in need of updating.

Annual reports submitted by the Commission to the legislature present the results of affirmative action. The most recent report, submitted in April 1986, shows improvement both in affirmative action plan development and implementation. The results are evident in the number and occupational location of minorities and women hired, retained, and promoted.

In 1985, 97 state agencies reported 46,166 employees, of whom 12.8 percent were black and Hispanic workers, and 48.5 percent were women (including minority group women). During the previous year, minority group employment, in particular, grew significantly faster than state employment as a whole. Black male employment increased by 16 percent;

black female, 10 percent; Hispanic male, 14 percent; and Hispanic female, 19 percent; compared with a 6 percent growth of total employment.

The profile of state employment shows minority and female concentration in traditional occupations, such as office/clerical and service maintenance jobs, but relatively less penetration into management and administrative positions.

Minority employees tend to be in larger agencies with social services, housing and human resources responsibilities, but not as often employed in the small special purpose agencies, including regulatory boards. This pattern of employment reflects the effectiveness of affirmative action in relation to staff turnover and the availability of hiring opportunities.

Summary

The success of affirmative action must ultimately be determined by numerical changes in the employment and occupational status of minorities and women. Affirmative action policy is predicated upon the assumption that current employment systems must be modified in ways that assure a fair and equal chance for groups previously excluded from employment to compete on equal footing with others who have long had artificial advantages in the labor market. In the absence of race and gender-specific measures designed to assure equal job opportunity, the present effects of past discrimination would perpetuate job inequality.

The available research, while often flawed methodologically, or limited by incomplete data, supports the conclusion that affirmative action plans, when well designed and conscientiously implemented, have contributed to an improvement in the employment status of minorities and women. There is no persuasive alternative explanation for the obvious changes in employment during the past decade in which many minorities and women have entered occupational fields from which they previously were systematically excluded. Yet, as indicated in the evidence discussed above, affirmative action has not been a panacea. Current labor market realities still find minorities and women in a substantially less favorable position overall, than white males. This situation is not the sole product of overt discrimination, a practice that has undoubtedly changed over the past two decades, and affirmative action alone will not solve all the remaining problems. But there is no basis for concluding that affirmative action has no legitimate role to play today in the multipart assault on the remaining vestiges of inequality in American society.

VI. BACKGROUND REPORTS AND STATEMENTS

The Study Group benefitted from a wide body of information on the development, implementation, and impact of affirmative action. The Group's Report cites many references to scholarly studies, public statements, and statistical evidence that were useful for understanding this very complex topic. Additional materials have been included as an appendix to the Report.

In preparing for the work of the Study Group, four papers were commissioned. Following is a brief summary of each commissioned paper, and a list of the other materials included in background reports and statements.

Equal Opportunity and Affirmative Action Policy Issues - Edward W. Jones, Jr., President, Corporate Organizational Dynamics, Inc.

Jones focuses primarily on the problem of upward mobility among minority group managers in American corporations. His analysis, based on personal experience, is placed in the context of historic experience with racism and sexism that affect current values, attitudes, and behavior. Jones argues that the lack of advancement of black managers into senior executive positions, both absolutely and in comparison with white women, reflects a deep bias against equal job opportunity that will yield to nothing less than a fundamental reordering of preferences within the business community. In his view, affirmative action in hiring is not enough; it must be bolstered by conscious efforts to train, assess performance, and promote minorities with race-specific strategies. Only after a sufficient number of minorities are elevated to senior executive positions, will attitudes and perceptions change in ways that will ultimately make affirmative action unnecessary.

The Origins of Affirmative Action - James E. Jones, Jr., Law School, University of Wisconsin.

In this paper, James Jones, former Associate Solicitor of the U.S. Department of Labor when the Philadelphia Plan for affirmative action in the construction industry was developed, describes the legal and policy context in which affirmative action evolved more than 25 years ago. In so doing, Jones attempts to correct the mistaken views of critics concerning the purpose, scope, and limitations of affirmative action policy. He traces the policy from its genesis in President Kennedy's Executive Order on equal employment opportunity, through its codification in Title VII of the Civil Rights Act of 1964, to the adoption of goals and timetables in the Philadelphia Plan of 1971, and finally to its current status as reviewed by the federal courts. Jones comments upon the U.S. Supreme Court trilogy of affirmative action cases during Summer 1986, and concludes that most of the standards previously set during two decades of EEO enforcement were left undistributed by the courts.

The Impact of Affirmative Action Regulation and Equal Employment Law - Jonathan S. Leonard, University of California, Berkeley.

Jonathan Leonard reviews the major studies conducted by economists to measure the impact of affirmative action on employment. He specifies his own theory, with testable hypotheses designed to correct some of the shortcomings of previous studies.

Using employment data within disaggregated occupations, Leonard applied statistical tests to a series of questions concerning the impact of OFCCP and EEOC on the employment of minorities and women. He concludes that OFCCP contributed to a higher level of employment for members of the "protected classes" than would have existed in the absence of affirmative action. Also, Title VII litigation, especially class action suits has played a significant role over and above that of affirmative action. Such enforcement mechanisms have benefitted black employees more than women, and those in skilled occupations more than the unskilled.

Changes in the Labor Market Status of Black Women - Julianne Malveaux, University of California, Berkeley.

This paper challenges studies that interpret employment and income data to suggest that black women have made substantial gains in the labor market, and might have reached parity with white women. The author conducts an exhaustive analysis of black women's occupational profile, labor force status, income, and poverty status both absolutely and in comparison with other women and with men. Malveaux concludes that while the evidence suggests a narrowing of differences with white women, most gains have been among younger women aged 16 to 34. Much of the convergence in income, however, is attributed to longer hours of work among black women.

Malveaux credits affirmative action as the major factor responsible for improving the occupational status of black women. This is so throughout the occupational spectrum, and not just for professional, technical, and managerial women at the top. Finally, she concludes that the current political and economic climate is not conducive to further gains like those observed during the past two decades.

NOTES

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4. Glenn C. Loury, "Equal Opportunity: Reality, Achievable Goal, or Elusive Dream?," unpublished paper prepared for Symposium for Senior Corporate Officers on EEO, New York, December 11, 1985. *

5. Jones, *op. cit*, pp. 28-29.

6. Bureau of National Affairs, *Affirmative Action Today: A Legal and Practical Analysis* (Washington: BNA, 1986), pp. 23-88.

7. Herbert Hill, "Race, Ethnicity, and Organized Labor: The Opposition to Affirmative Action," *Journal of Intergroup Relations*, pp. 31-82.

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11. Glen C. Loury, "Comments on Affirmative Action," paper presented before the 7th Annual Judicial Conference of the District of Columbia Circuit, May 19, 1986. *

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✓ 1. Women's Legal Defense Fund

  ✓ a. Combatting Sex Discrimination in the Workplace: Need for Contract Compliance Requirements

  b. Legal Bases of Affirmative Action: Briefing Paper, 1981

  c. Statement Before U.S. Civil Rights Commission, Consultation on Affirmative Action, March 5-7, 1985

—o— 2. John Field, "Affirmative Action: A Fresh Look at the Record Twenty-Two Years After the Beginning" Center for National Policy Review, September 1983.

—o— 3. The Travelers Companies, "Overview of MOST/BEST Program for Supervisors," October 1986.

✓ 4. Glenn C. Loury, "Comments on Affirmative Action Before the 7th Annual Judicial Conference," May 19, 1986.

✓ 5. Glenn C. Loury, "Equal Opportunity: Reality, Achievable Goal, or Elusive Dream," December 11, 1985.

—o— 6. Christopher Edley, Jr., "Affirmative Action and the Rights Rhetoric Trap," Howard Law School, March 1986.

—o— 7. Janice F. Madden, "The Persistence of Pay Differentials: Economics of Sex Discrimination," Russell Sage, Women and Work, vol. 1., 1986.

✓ 8. Richard Wasserstrom, "A Justification of Preferential Treatment Programs," Rockefeller Foundation Conference Paper, 1982.

✓ 9. Arthur Greene, Connecticut Commission on Human Rights and Opportunities, Status of Affirmative Action in Connecticut State Governfment, Hartford, June 1986.

Commissioned Papers

✓ a. Julianne Malveaux, "Changes in the Labor Market Status of Black Women."

✓ b. James E. Jones, Jr., "The Origin of Affirmative Action."

✓ c. Jonathan S. Leonard, "The Impact of Affirmative Action on Regulation and Equal Employment Law."

✓ d. Edward W. Jones, Jr., "Equal Opportunity and Affirmative Action Policy Issues."

PART II

REPORT OF THE STUDY GROUP ON AFFIRMATIVE ACTION
TO THE
HOUSE COMMITTEE ON EDUCATION AND LABOR

BACKGROUND PAPERS AND STATEMENTS

EQUAL OPPORTUNITY
And
AFFIRMATIVE ACTION POLICY LESSONS

Based On The Experiences Of Some Of Americas Best Prepared Black Managers

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Authors Introductory Comments

Prejudice, discrimination, equal opportunity, and affirmative action are intimidating subjects involving deep intellectual waters and complex cross currents from many different professions. These deep waters are all the more intimidating due to the reefs that surround them constituted of myriad polemics about beliefs, ideologies, personal values and politics. Anyone deviating from currently prevailing beliefs, risks the antagonisms and resentments of those supporting the in place beliefs and positions --- even if new information shows those beliefs and positions are wrong. These reefs tend to frighten off many who might approach involvement because of the potential threat and the risk of intensive ideological or political scrutiny or personal villification. Altruism can be bludgeoned by those consumed with ideological fervor. Just the mere accusations of being too moderate, too liberal, or too conservative can be major distractions from ones work and family and lead to intrusions into ones personal life. Such labels can also be time consuming and possibly even painful; requiring extensive, and tiring, self explanation, self justification, or other forms of response.

For these and other reasons, I initially declined several requests to contribute a paper to these proceedings.

But these concerns are outweighed by an even more intimidating and foreboding concern than all of the combined forementioned considerations. This concern consists of reflections on the discomforting answers to the question: **Where are we, in America, heading as a nation if we Americans are afraid to tell the truth to each other?**

In the end, conscience and civic responsibility compelled me to change my response and to accept the requests to participate. I found it unconscionable, that I, by not being willing to attempt to shed light and understanding on these issues, was colluding with prejudice. I concluded that truth is not the exclusive monopoly of any one ideology and that the imperative of the standard of truth must be the deciding criteria for action. And so I offer these perspectives in the spirit of attempting to shed light by sharing the truth in order to reduce the currently excessive heat.

The introductory quotations from Camus and Allport capture what is, in my view, the primary obstacle to understanding prejudice and discrimination. This is the obstacle of ignorance. In depth and objective knowledge is prerequisite to achieving equal opportunity.

(II)

I have assumed in this report that everyone will have previously read **Black Managers: The Dream Deferred**. This article is my assessment of the current nationwide status of black corporate managers and it was published in the May-June 1986 Harvard Business Review. The overwhelming verification that the article has received is in some ways more important than the article. The response of black managers from across the nation -- with not one copany excepted -- has been that this analysis painfully and surrealistically captures their realities. Subsequent investigative reports sources in the Wall St. Journal, the New York Times, and the Christian science Monitor, to name a few, have verified this analysis and findings.

Concerned corporations are using this analysis to reevaluate, to better understand, and to improve their progress as this report rapidly spreads throughout management and executive ranks. And many sincere companies are increasingly seeking advice and help.

In order to satisfy the request of the Harvard Business Review to do this evaluation, I had to study the status of all managers, including white males and females and other minority managers. In order to understand the status of any one group of managers, it is necessary to understand the situational context and the similarities and dissimilarities in the experiences of other groups of managers.

I am a practical student and observer of organizations rather than a theoretician. My primary objective from the outset has been to understand the dynamics associated with different types of people working together in heterogeneous organizations associated with equal opportunity. These dynamics are more complex than the dynamics of the homogeneous organizations that prevailed prior to equal opportunity becoming law. I became involved in this complex of issues over the years by observing behaviors, and listening to others' observations of behaviors, and then seeking out theories in many functional fields that explained these observations. But while I began my efforts to develop a conceptual framework while studying at Harvard Business School, my perspective, as is my experience and background, is that of a manager who has had many diverse responsibilities, from managing thousands of subordinates, to strategic planning, marketing, running a profit center, doing internal corporate consulting, and now running my consulting business.

I was asked to write about corporate actions that would improve the upward mobility of blacks to senior executive positions. I have chosen to forego this focus at present, with an eye toward addressing it at some point in the future. I made this decision because, in

(III)

my view, the more urgent information needed by those considering policy, concerns certain environmental developments that have shaped the present situation. This information is prerequisite to understanding the current external and internal climates of corporations. Therefore, I will sketch these developments and their impact.

The intent of this report is not fault finding or finger pointing. From my view, this would not be productive, for I have concluded that most, if not all of us share in the responsibility for the current situation. Blacks, whites, males, females, Protestants, Catholics, Jews -- all Americans, share the blame for the current situation, and the responsibility for fixing it. Many fair minded Americans; white, black, male, female, Protestant, Catholic and Jew, from both academia and business, through their candor and contributions of knowledge, experiences, insights and suggestions have made my research and reports possible. So the posture I seek is based on candor but not fault finding or finger pointing at any one group.

In the words of Pogo, "I have met the enemy and it is us." I would emphasize that "it is all of us" including the many black managers who from fear and self interest have not been honest with white managers, even those who are well intended. And "us" also includes the many white managers who are not receptive to hearing the truth, especially those who punish truthful black managers by assuring that these honest black managers have great futures behind them.

Many senior executives have encouraged my research in the hope that it would lead to increased clarity and help them to refocus their company activities for greater effectiveness. So, I am convinced that many senior executives are well intended. An accurate understanding of reality is prerequisite to improved managerial effectiveness just as it is to setting policy. I sincerely hope that this attempt to portray reality does not in the end become an unwisely wielded bludgeon to indiscriminately penalize companies. The factor that is just as important as accurate knowledge is a comfort zone within which candor can occur without penalty. Honesty, includes admissions of failures as well as successes. If we sincerely seek corporate honesty, we must provide a comfort zone immune from censure.

I wish to emphasize once again, that the primary obstacle that I see is a pervasive lack of knowledge and understanding about these complex issues. Executives in general, and most CEOs in particular, as is true for most national leaders, don't have the background nor the information to understand these complex issues. No CEO of a major corporation has ever walked in the moccasins of a black, other mi-

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nority, or female manager, and few have been privy to the hard realities experienced by nontraditional managers. Corporate staffs can be self interested gate-keepers, and colleges, M.B.A, and advanced management programs don't teach this subject. There are no books, and there is a dearth of government, foundation, or academic research or funding support for research. The odds are that senior* executives are ignorant of what actually happens as non traditional managers go through large organizations. Indeed, a lack of knowledge rather than malevolence may be the primary barrier to progress.

A concerned CEO of a multi-billion-dollar, multinational corporation framed the issue facing corporate heads when he said, "I'm concerned. The curve of progress has started to flatten more than it should relative to the effort we have made. I need to know how to be successful in making progress on the issue of moving competent but diverse people who are not clones of those at the levels above them successfully up into my company".

However while I see a lack of knowledge as a major obstacle, I also have a growing concern that in some companies, in spite of the numbers, there is a serious retreat away from from equal opportunity for black managers.

Many black managers who I interviewed pointed out how the current one dimensional numerical measures of progress camouflage this corporate trend. A black manager in banking really honed in on the problems caused by inadequate measurements in combination with a lack of accountability for upward mobility and career success. In his words, "They churn us at the bottom without changing the relative numbers. We (blacks) show up as a given level of statistics, rather than human beings, being crushed one by one".

My assumption throughout this paper is that Americas national policy and the purpose of policy considerations is the identification of policies consistent with an America in which white, black, and other minorities; males and females; Christians, Jews, Protestants, Catholics, Muslims, and Mormons; young and old; regardless of non performance related personal characteristics, experience realities of equal opportunity; equal freedom; equal dignity and equal citizenship. With this precept my objective is to inform deliberations with a deliberate bias toward truth and the real world.

SECTION I

Policy

The policies that affect work and success in America are of great social importance. Sound policy cannot be divined from wishful thinking or mythology. The prerequisite of wise policy deliberation is clear, accurate information and knowledge. Even with the best motivations, issues that are inadequately understood cannot be properly addressed. Therefore, Americas policy makers, whether in business, government, academia, or other institutions, have a need for the best knowledge available upon which to base their policy deliberations and to make intelligent, rational, choices. Knowledge is prerequisite to progress.

The logical approach to reaching policy decisions is to gather and to analyze facts and the associated theory. Effective policy analysis requires that policy makers must think clearly and systematically about complex problems and form competent views of the issues, alternatives and probable consequences of different actions. However, while understanding the related theory is important to effective policy analysis, theory is no substitute for hard data that goes beyond theory in order to reflect reality.

The focus of this paper is to provide background information that will help policy makers decide:

> **What policy directions should be considered in order to move America in the direction of greater equal opportunity?**

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The Challenge Of Studying Prejudice and Discrimination

The objective study of prejudice and discrimination is difficult. No individual, regardless of how learned, has infinite knowledge. All humans are selfish and narcissistic. Our behavior (especially in unobserved privacy) and stated beliefs are often inconsistent, and we are all products of our own unique experiences. It is difficult to avoid reflecting our flaws and personal biases.

Equal employment opportunity involves understanding and controlling prejudice and discrimination in order to provide objective and uniformly fair treatment to all individuals based on job relevant criteria. By definition, a major issue becomes the multi-cross-disciplinary complexity of this subject. Equal employment opportunity is an issue involving human beings, human relationships and social and behavioral science issues many of which are rooted in culture and history. In addition, the situational context of the work place and the organization requires that functional knowledge of organizational behavior is integrated with other functional areas into a multidisciplinary whole. In order to understand and evaluate the realities of equal employment opportunity and the individual in the work place, we must also understand the organization. And understanding organizations requires understanding a systems problem consisting of interrelated forces that are acting simultaneously. Finally, in order to understand the organization, we must understand the external environment which organizations operate within and the forces which they react to.

Many of these issues do not lend themselves to meaningful quantitative analysis. For example in order to understand the realities of a culture, it's necessary to go beyond written and stated policies and beliefs in order to observe and to record cultural realities and how things really are. Moreover, in spite of tremendous advances in the physical sciences, mankind has not created models that predict complex human behaviors and interactions without qualitative analysis. Single dimension research totally reliant upon quantitative techniques is at risk of reaching the wrong conclusions, overlooking relevant factors and contributing to misunderstanding. Research involving human relationships and the dynamics between people requires an understanding of the underlying individual and group emotions, attitudes, and motivations.

Because of these and other reasons, equal opportunity within large organizational settings is a field in which there are few experts and no PHDs. The profound complexities involved in the issue of equal employment are such that the difficulty in structuring comprehensive study leading to one all encompassing terminal degree would be enormous. The functional knowledge content would be so voluminous as to be almost insurmountable except for perpetual students. There are few all knowledgeable experts.

If there were experts, we would have to deal with the issue of the personal bias of the expert skewing the outcome. By the time people approach maturity and the supposed ability to think for themselves, they have been conditioned in varying degrees to think and believe similarly to the many others who have participated in their development and socialization. People, both as individuals and as groups are the "products of all that they have experienced." Therefore, even if a person is "expert" and understands the issues of prejudice and discrimination on a professional functional basis, it is impossible for that human being -- or any other human being -- to be partitioned off from his or her own personal prejudices and emotions. Even "experts" on prejudice and discrimination wrestle with their personal biases.

Because of these human frailties, we must distinguish between, "expert advice and knowledge" on the one hand and the "opinions" of experts on the other hand. "Expert opinions" based upon personal perceptions rather than appropriate methodical research and analysis can be as much in error as the opinions of those who are not considered experts. What we don't know but acknowledge as voids in our knowledge can be discomforting, but what we think we do know, that is not so, presents an even greater danger.

A Note On The Meaning And Significance Of Work In America

Work in America is critically important and has primary centrality in our lives. Work directly represents or symbolizes our social status, our accomplishments, our competence, our prestige, our power, our self worth, and is perceived as a primary valuation of every individual American. When we meet people, it does not take us long before we attempt to determine the kind of work they do. What we do in our work and the kind of work we do is a major determinant of how we as individuals are percieved, evaluated and valued by others. In the minds of others, our work is a major measure of our worth.

Moreover, the nature of white collar professional and managerial work is increasingly interdependent, especially as levels of responsibility and authority increase. Job effectiveness and success is based upon getting things done with and through others and not as a result of independent and singular actions. Success in interdependent situations requires closeness, trust, inclusion and most important, our acceptance by the others that we work with. In brief, success is determined by relationships with others.

In managerial ranks the motto frequently used to foster cooperation is teamwork. However, extensive research indicates that the reality is one of competition. Teamwork may work in athletic events involving team sports but at work even people who advocate teamwork do so with the expectation that they will be number one on the team. The reality in white collar professional and managerial positions is one of competition for recognition, status, prestige, power, and success.

Other factors are also major influences in the system of managerial work. Factors such as organizational leadership, the nature of the formal and informal organizations, the corporate culture and how things really work, the nature of reward and control systems, the objectivity or subjectivity of evaluations, and the degree of freedom of individual choice as opposed to rigidly clarified, defined and adhered to company policies have a major impact. Among their affects they greatly influence work climates, and individual and group behaviors by defining accepted, acceptable, sanctioned, and punishable behaviors. The composite affect of these factors is to define the nature of "what's in it for me", the primary motivation for all individuals.

The Linkage Between Organizational Efficiency And Equal Opportunity

Organizational efficiency is a state in which all individuals are developed, and utilized to their maximum potential. This is a state akin to that of an automobile engine in which all cylinders are contributing their maximum power. Research indicates that the correlation between the contributions made by a person, and the rewards received by the person, is the primary determinant of organizational efficiency. This conclusion centers upon a primary human motivation by providing a positive answer to the question "What's in it for me"? Even Skinners Pigeons pecked or stopped pecking buttons depending upon whether or not they were rewarded as a result of their efforts.

Equal opportunity in management is using uniformly fair criteria (criteria that do not have disparate exclusionary impact or that do not creat significant differences in the degree of difficulty required to succeed) to move the most significant contributor ahead. Fairness and efficiency are symbiotic within high discretion white collar work places, such as management.

Rationally, equal opportunity, organizational efficiency, productivity, and fairness are inextricably interrelated. However executive selection procedures are quite often not rational.

There are no clear cut and uniformly accurate standards for selecting those with the potential for executive success. It has been found that the effective general manager[1] is dependent upon informal networks of cooperative relationships. Sometimes hundreds of people, including colleagues, customers, bosses and subordinates keep the manager in touch with complex information. Outsiders, no matter how talented or well trained rarely do as well. these successful executives rely on informal methods such as conversations which contain considerable joking and non work related issues. friendship, empathy, acceptance by others and help are the keys to success.

Predicting and selecting executives for success is also an area of great subjectivity and lacking in clarity. The Cox report on the American Corporation[2] observed that the rate of predicting executive success through testing doesn't work and that senior executives making promotion, job-assignment, and recruitment decisions are advised to trust their own judgement.

it is mythology that the "best man" always won even when all managers were white males. Executive upward mobility requires educational, technical, intellectual, and interpersonal competence. But the higher the executive proceeds, the more important become networks of friendship and support, positive images, and perceptions of fit based upon perceived similarity.

Perceptions are culturally based, shaped by stereotypical images, reflective of psychologically based individual and group emotions that are often subconsciousness, and rooted in American culture and history. In any selection process involving a universe of the "most competent" [i.e. selection at the right tail of a normal distribution curve], there is no known method of selection that works consistently. So executive selection is an imprecise process reflective of the values, beliefs, individual and group perceptions of the in place executive elite. This explains why the executive selection process tends to reflect who "looks like" the in-place executives. Those perceived to "be most like" or to "look most like" the in place elite receive "preferential" psychological and social support.

These determinants of organizational succession are not new. They were described in 1938, long before equal opportunity when such norms were accepted. Chester Bernard, wrote[3]:

> Although I have never heard it stated that such a thing as an informal organization exists, the most careful attention is paid to it. this is usually not apparent except to those directly concerned. An informal organization exists in all organizations. The general method of maintaining an informal executive organization is so to operate and to select and promote executives so that a general condition of compatibility is maintained.
>
> Perhaps often and certainly occasionally men cannot be promoted or selected because they do not fit, where there is no question of formal competence. This question of fitness involves such matters as education, experience, age, sex, personal distinctions, prestige, race, nationality, faith, politics and such personal traits as manners, speech, personal appearance, etc. It represents in its best sense the **political aspects of personal relationship in formal organization**.
>
> Informal organization, although comprising the processes of society which are unconscious as contrasted with those of formal organization which are conscious, has two important classes of effects: it establishes certain attitudes, understandings, customs, habits, institutions; and it creates the condition under which formal organization may arise. The most general direct effects of informal organization are customs, mores, folklore, institutions, social norms and ideals.
>
> There is much confusion between formal institutions, resulting directly from formal organizational processes, and informal institutions resulting from informal organization; for example, a practice established by legal enactment, and a custom, the latter (the custom) usually prevailing in the event of conflict. Informal organization corresponds to the unconscious or nonintellectual actions and habits, the formal organization to the reasoned and calculated actions and policies. **The actions of formal organizations are relatively quite logical. Yet one will hear repeatedly that 'you can't understand an organization or how it works from its organization chart, its charter, rules and regulations, nor from looking at or even watching its personnel.' 'Learning the organization ropes' in most organizations is chiefly learning who's who, what's what, why's why, of its in-**

> **formal society. Although ordinarily used in a derogatory sense, the phrase 'invisible government' expresses a recognition of informal organization.**

When Barnard wrote those words, Jews and Italians were not seen in the upper reaches of large American corporations, much less blacks. Even Irish Catholics were few and far between in some companies.

THE NATURE OF MANAGERIAL JOBS

Positive and supportive work environments are prerequisite for all managerial success. The measure of managerial and white collar professional job effectiveness is the ability to get things done which is dependent upon getting things accomplished with, through, and by others. Effectiveness and the ability to get thigs done is dependent upon the support of bosses and superiors, peers, and subordinates. And the support of these groups is a function of beliefs, national social climate, and internal organizational climates. So, regardless of education, intellect, competence, hard work, contribution, ambition, motivation, committment, character, and integrity, indifferent, hostile, cold, aversive or otherwise non supportive work environments and work milieus can preempt any individuals success.

An advanced degree reflects higher levels of ambition, intellectual competence, and expectations of achievement. High achievers not only have a desire, but a psychological need to achieve. Success for high achievers is inextricably intertwined with their self concept. A failure to achieve can contribute to a devaluation of a high achievers sense of self. This can lead to depression and deep psychological problems. When the need to succeed is preempted by **situational circumstances in which it does not matter how well a high achiever performs or how significant their contribution**, deep frustration sets in. Ultimately, not only the would be high achiever pays a price, but so do the would-be achievers loved ones and family.

"Relative" Deprivation: A Root Causal Factor In Social Conflict

Our nature as humans is that we are incorrigible comparers. We not only evaluate whether our needs are satisfied in an absolute but in a relative sense by endless -- sometimes invidious --- comparisons with others. Our points of reference are not only other individuals but our own and other groups. This means that we not only evaluate in the sense of "I have enough," but we also evaluate on the basis of "I have more or less than somebody else." We also evaluate and compare on the basis of what dissatisfies and causes us to feel deprived compared to others.

In our technologically shrunken society we cannot hide from each other. We share common citizenship rights and responsibilities and a common destiny as Americans. With broad Television and media coverage, as college and graduate school colleagues, as co-workers, all of us know more and more about the rest of us. The inconsistencies and double standards for whites and blacks are increasingly obvious and are contributing to -- and can be predicted to continue to contribute to -- resentment and conflict at an accelerating rate. Comparisons by black managers of their career progress, accession, positions of centrality and power and overall success with their white colleagues are turning out unfavorably at a disproportionately high frequency. And as these patterns of relative deprivation compared to whites continue. The data indicate that the better prepared and more competent the black managers are, the more acute the anger and resentment becomes. This explains the growing anger and resentment among many of the best prepared black corporate managers.

Opportunity and freedom are at the central core of our most cherished American values. American history is replete with examples of how perceptions of disparate access to freedoms, opportunities and other measures of citizenship have led to violent social conflict and turmoil. Today, we have the opportunity, and the knowledge, which combined with vision, truth, courage and leadership will give us the chance to manage our way through these issues.

Bellwether Of Americas Future: Accession To High Prestige Success:

There is a widespread myth that unique individual qualities such as intellect, education, competence, ambition, hard work, character and interpersonal skills are the primary and ultimate determinants of individual success. But social and behavioral science has for years identified group membership, group behavior and adherence to group habits, traditions, customs, and expectations, as being more important determinants of success in many situations, especially those involving interdependence.

Power within organizations is the ability to get things done. In interdependent work situations such as within the managerial ranks our ability to get things done depends on relationships and support from others. If for any number of reasons, these relationships are not comparable to the relationships of others with similar responsibilities we will probably not be as effective as they are. Those factors, whether organizational, group, or individual which give managers a differential disadvantage in relationships make them less powerful, less effective, and ultimately less successful. When most members of a group cite similar impediments as factors in making them less powerful and less effective, we are led to suspect that the obstacle is a group obstacle and not an issue of individual shortcomings. We cannot remedy group impediments by simplistically searching for individual developmental needs and shortcomings while ignoring group dynamics.

It is not new information that prejudice is often packaged in group norms and individual and group behaviors that conform to these norms. For many years, social scientists such as Allport have recognized that much prejudice and discrimination is group based. And group behaviors are much more than the sum total of individual behaviors, they have an added dimension that makes them extremely resistant to change. Therefore in order to understand prejudice and discrimination, especially within organizational settings, we must go beyond the intellectual perception and expectation that they will be understood or eliminated by merely understanding and eliminating individual acts of bigotry. Within organizations, prejudice translates into those types of conformance to individual or group behaviors, group norms, habits, and customs that exclude. And this is the primary manner in which discrimination is packaged.

For these and other reasons I have concluded that The litmus test of American ideologies and values is occurring within the high prestige managerial ranks of major corporations. The cutting edge, the bellwether and the precursor of American societies future racial, gender and religious relationships between groups is being defined by our ability to accede to and succeed -- mutually, and simultaneously as individuals, and as groups -- within high prestige responsible corporate managerial positions that are central to profitability.

Where else but at work are blacks, whites, other minorities, women and men -- as we work with one another -- so interdependent; require such unique levels of close relations; while often occupying such unfamiliar roles between members of different color, ethnic, gender, and religious groups. In a reality of equal opportunity these roles go beyond historic and stereotypical relationships to include roles as bosses, subordinates, or peers to people we may never have related to in this manner. And there are few models, blue prints or prototypes to guide us. There are no books, we do not experience these conditions in schools, places of worship, most neighborhoods, or in recreation and play activities. And these unfamiliar relationships often involve negative attitudinal, psychological, and emotional reactions and feelings.

And because of the unconscious emotional issues and the interdependence of high prestige managerial work, there is a potential, motivation, opportunity, and risk of individual, group, or organizational sabotage. When people within an organization are not treated equally, do not have equal power, when they experience different levels of inclusion or support, or when they experience various forms of treatment discrimination (whether or not it is officially sanctioned by the organization), predictably they will not experience equal career success or equal levels of upward mobility.

If our best educated Americans representative of all groups cannot make our most valued ideals and beliefs work in corporate managements, this failure does not bode well for Americas future. It is hard to find work situations toward which more competent people gravitate than the corporate executive suite. This is an ideal point of focus if we are sincere in moving toward a reality in which our most cherished American values move toward convergence with our reality. It is here that we will decide whether some Americans will remain imprisoned within predesignated "places".

If we as a nation are going to move closer toward the realities we cherish and value in our national ideology, it will be based upon our success in learning to work together more effectively in these types of non stereotypical positions. And if our best qualified but diverse Americans, whether black, white, other minority, female and male are going to work together effectively, we must develop a much more profound understanding of the obstacles between individuals and groups in these high prestige leadership ranks of corporations. Because it is these very ranks that wield the power to affect progress, set examples to be emulated, and that will ultimately determine where corporations are going. Major corporations not only reflect and respond to society, they also are major influences on society. With knowledge, corporate influence from moving toward a reality of equal employment can be very positive on society.

The Methodological Logic Of Focusing Upon The Best Prepared

The scientific method of analyzing complex problems requires holding the maximum number of independent variables constant in order to understand the relationships between other variables. This methodology is difficult in issues involving humans because in spite of our tremendous advances in knowledge and analitical tools, human behavior cannot be reduced to single dimensional quantitative models.

It is difficult to identify generic obstacles to equal opportunity by merely evaluating individual experiences. No matter how qualified and competent an individual is, perfect people do not exist. And regardless of competence, any individual examined under an unsympathetic microscope or within a goldfish bowl environment can be shown to have imperfections. I have never seen an individual who could be found fault-free unless there was an impetus or motivation on the part of the evaluator to find that person fault-free. Any experienced manager can, if so motivated, camouflage reality to him or herself and others by presenting any number of apparently logical reasons why any person had any particular career experience, whether that experience was negative or positive. We all have the ability to rationalize, deny, or hide from reality -- to tell ourselves "vital lies" -- in order to feel good about ourselves.

By examining the status, experiences and perceptions of the best prepared managers as a group, we gain insight and clarity into group obstacles. By controlling issues of competence, education, motivation, ambition, and class by selecting this universe, we gain clarity and logic for policy directions.

Most important, by focusing on universes of "best qualified" and identifying common obstacles perceived by black managers as a group, we partition and simplify the identification, analysis, and understanding of issues that otherwise might be discarded as individual shortcomings. Analysis of the experiences of the best prepared, identifies group obstacles. Selecting this sample universe also eliminates confusing terminology such as "advantaged and disadvantaged." A sample that focuses on the best prepared maximizes our understanding of the impediments facing those who haven't depended on others and have accepted personal responsibility to get ahead

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SECTION II

AMERICA AT A CRITICAL JUNCTURE

Introduction

In 1964, America was a society in turmoil as open conflict increasingly occured between blacks and whites. The historic legacies of prejudice, discrimination, and exclusion of black Americans that were rooted in slavery and that had never ceased simmering just beneath our social surface were erupting in spreading patterns of nationwide confrontations. Gunnar Myrdal had cncluded that the treatment of the Negro was "America's greatest and most conspicuous scandal". And now in defiance of threats, violence and physical intimidation, this scandal was boiling over -- all over America. (See Appendix II for 4 pages of extracts from Myrdal.) Myrdal had also predicted that "The development of the American Negro problem during the years to come (was) fateful not only for America itself but for all mankind". Black Americans acquiescence to second class citizenship was ending as they rose up in protest. Exclusion, a lack of opportunity, poverty, protests, conflict, social turmoil, national and International embarrassment, made particularly poignant and visible by the media of television, painted an embarrassing picture of a hypocritical America. A picture that exposed America to the critical scrutiny of a watching world.

President Kennedy went on national television in 1963 and said that America "faced nothing less than a moral crisis, both as a country and as a people. It cannot," said President Kennedy, "be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is time to act in the Congress, in your state and local legislative body, and, above all, in all of our daily lives."

Seven hours later, Medgar Evars, was shot and killed in Jackson Mississippi, and the summer of discontent began with demonstrations erupting across the nation, North and South, including leading cities such as New York and Chicago. There were 1,412 demonstrations by the U.S. Justice Department count. "Newspaper pictures showing the limp bodies of blacks being carried to police patrol wagons became a great tapestry of the times. Over the land echoed the Negro hymn 'We Shall Overcome.' Now the revolution was indeed in full stride, and it rushed pell-mell to the grand climax of that summer: the 210,000 strong march on Washington of August 28, 1963."4

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There have been many changes materially and perceptually in America since these days of conflict. A Wall St. Journal editorial of July 7th, 1986 reflects a few of the perceptual changes as seen by William R. Beer, a sociology professor at Brooklyn College. The concerns seen by Professor Beer are like night and day to the concerns voiced by President Kennedy in 1963. And as the following excerpts from professor Beer illustrate, there has even been a change of language and language meanings such as from "discrimination" to "reverse discrimination". There is also a view that women are the prime beneficiaries, and that minorities and women recieve preferential treatment over innocent white males. And reverse discrimination and preferential treatment of women and minorities have displaced exclusion and discrimination against blacks as the primary problem in this view. Professor Beer wrote:

> Just in time for last month's Liberty Weekend, the Supreme Court announced its decision that preferential treatment for blacks, other minorities and women was constitutional. We now know that it is legal for white males to be subject to racial and sexual discrimination in favor of people who have never personally suffered from it in the past. The Supreme Court's decision can only increase the resentment of a largely hostile public. A large majority of Americans are opposed to preferential treatment for women in hiring and admissions to professional schools.
>
> As with all Utopian schemes, reverse racial and sexual discrimination has strange effects when imposed on a mostly unwilling public. One of the most frequent criticisms of preferential hiring is that privileges for a certain group have a way of becoming a permanent part of the political landscape. One of the ways in which this is accomplished is by subjecting anyone who questions the policy to public vilification. My own experience is a case in point. Last autumn I published an article that was critical of affirmative action. As a result, two black professors at Brooklyn College published personal attacks on me, accusing me of being a racist and calling for by dismissal. I am protected by tenure, but one wonders how many have shrunk from protesting such a sacred cow, out of fear of persecution by the lobby for reverse racism.
>
> Some of the most vocal supporters of affirmative discrimination at Brooklyn College are among the female faculty. Part of this is due to feminist ideology, and part is simple serf-interest: It is well known that white women have benefited enormously from

> **affirmative action, and my college is no exception. When I first came to the Sociology department, there were three distinguished black professors and two lower level black faculty, none of whom had been appointed as a result of affirmative-action policy. The proportion of female faculty members was considerably less than half. Now, after two decades of affirmative action, my department is almost half female (10 out of 22 full-time professors), but there are no black professors at all. Who has won and who has lost? I cannot believe this outcome is consistent with the original intention of the Civil Rights act of 1964.**

How did these dichotomous changes in perceptions come about? Are such changes reality? If they are reality are they limited or pervasive? And how and why did the language change? The answers to these and other questions are prerequisite to those considering policy directions. In fact those considering policy directions have a critical need to know!

The Current Confused Debate

The issue of equal opportunity is the focus of debate within American society, government, corporations, academia, and other centers of national leadership and policy. And while debate rages, cofusion reigns over the status of equal opportunity; the meaning of affirmative action; the progress made; and whether more problems are being solved or created.

One point of view argues that extensive employment discrimination against minorities and women no longer exists, that it has been eradicated, that there are no structural barriers, and that discrimination is a relic of Americas past history. Many with this point of view define affirmative efforts to achieve equal opportunity as "reverse discrimination" against innocent white males and vehemently argue that discrimination does not exist unless there is proof of "intent" to discriminate against a specific individual. There is also a perception that progress is discounted and collegial respect is lacking. Therefore, affirmative action is a stigma that robs the self worth and the self esteem to its intended beneficiaries by denying them the prerogatives and satisfactions associated with achieving on their own.

It is further argued that since equal opportunity is a faite a compli', and widespread employment discrimination is a matter of the past, affirmative actions are no longer needed or appropriate. Logi-

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A CORPORATE OBJECTIVE NOT ACCOMPLISHED: EQUAL UPWARD MOBILITY FOR BLACKS, OTHER MINORITIES, & WOMEN

INTRODUCTION

This section of this report expands the picture of the current corporate managerial situation presented in the May-June 1986 Harvard Business Review, titled **Black Managers: The Dream Deferred**, by including the status of ethnic white males, white women, and other minorities. Our objective is a comprehensive assessment that will allow us to compare the relative progress of each of these groups in order to develop insights into what remains to be done to achieve equal upward mobility for all Americans, including white males.

The nationwide EEO-1 reports only represent about 45 to 50% of all managerial jobs, but they represent a much higher proportion of managers in large corporations and they also indicate key trends within large corporations. From 1966 through 1984 there was a growth of over 1.6 million managers. Over 83% of these jobs went to whites with white males gaining 49% and white females 35% of this managerial job growth. Total minority managerial growth was 16.6% of these 1.6 million jobs. In 1984 the EEO-1 report shows there were 1,076,244 non traditional managers (all managers other than white males) comsisting of 761,073 (71%) white women, 163,420 (15%) black male and female managers, and 151,761 (14%) total other minority managers. Absolute numerical progress has been significant. In 1984, 91.6% of all managers were white, but 20.4% were white females an increase from the 9.1% white females in 1966. All minorities combined totaled 8.4% of all corporate managers.

The percentage of white female managers is growing rapidly increasing from 16.5% in 1980, 18.8% in 1982 and rising to 20.4% in 1984. Other minorities, primarily asians are also increasing rapidly from 2.4% in 1980, 3.7% in 1982 and 4.0% in 1984. Black women increased from 1.2% in 1980, to 1.6% in 1982 and to 1.7% in 1984. However black males have shown a net decrease in absolute numbers that tends to be camouflaged because their percentage representation has been stable at 2.7% from 1982 through 1984. Between 1975 and 1980, the ratio of white female to black male managers grew a total of 19% for an average growth rate of 3% per year. But between 1980 and 1984 the ratio of white female to black male managers grew at an accelerating rate of 162% for an average growth rate of over 32% per year.

A major area in need of in-depth analysis revolves around black and Hispanic male managers. Among non traditional managers, these are the only two groups that suffered an absolute net decrease in headcount. All other groups of nontraditional managers have a net increase in headcount between 1982 and 1984. But black males suffered an absolute loss in headcount from 110,000 in 1982 to less than 99,000 in 1984.

Black males only constituted 9% of all nontraditional mangers, yet they accounted for almost 60% of the total headcount loss among nontraditional managers from 1982 to 1984. Hispanic males constituted the balance of the loss. While the mix of males in manufacturing industries is greater than females, and the mix of females is skewed toward service industries, there is a need to clearly understand beyond speculation why a group representing only 9% of the population accounts for almost 60% of the casualties. We must develope a far better understanding of the differences in the experiences and obstacles of minority males, minority females, and white females.

Ethnic white males are not tracked in EEO-1 reports but the available data indicate they are making excellent progress as executives. Korn Ferry Int. found that Jews, 2.5% to 2.7% of the American population, were 5.6% of senior executives in 1979 and 7.4% in 1985. Good news on the status and progress of Jews in America also comes from other more comprehensive analyses. In a seperate study consisting of six years of research and interviews, the conclusion was that today in America, there are few structural obstacles to Jewish success and achievement even into the highest, most prestigious positions of corporate leadership, including chairman and chief operating officer. Charles Silbermans' analysis not only predicts a positive future for Jews in America, but notes that today, Jews have a choice of being assimilated into the broader society or of keeping their Jewish identity. It is indeed good news that being Jewish in America no longer results in exclusion.[5]

Catholics, 25% of the population, were 21.5% of senior executives in 1979 and 27.5% in 1985. Italians and other southern European ethnics are predominantly Catholic or Jewish. For both groups of ethnic white males, representation in the executive ranks exceeds their proportion of the general population. Neither religion nor ethnic background appear to be insurmountable obstacles to progress for white males.

However similar progress in upward mobility and career success is not indicated for minorities or women. The senior executives were 99.02% white, 97.08% male, 2.2% female, and less than 1% total minorities of color (including blacks, Hispanics, and Orientals).

Blacks are by far the largest minority of color in America so the relative extent of their under-representation in top corporate positions is particularly obvious. And although white women are increasing their representation as managers and their pool size in middle management, they are not acceding to top corporate positions at the rates that would be expected based on their rates of representation. The numbrs lead to the conclusion that in spite of significant numerical progress, equal upward mobility and equal success of minorities and women as a corporate equal opportunity objective, is an objective that has not been achieved.

Corporate Climates For Nontraditional Managers

After consulting with hundreds of corporations, the authors of Corporate Cultures[6] noted that "ritualistic barriers to the assimilation of outsiders into corporate cultures - barriers that involve countless minuscule behavioral patterns - constitute one of the biggest problems women and minorities face in rising in the corporate world.... Managers who are serious about achieving real integration in the workplace will have to start by spelling out standards for social behavior in relationship to these new members of the culture. Failure to accept women and minorities into the mainstream culture hurts not only those victimized but the long term vitality of the business itself. The measures taken to date have been helpful but inadequate. Stronger action is needed - specifically action focused on the ritualistic cultural barriers to assimulation that are so hard to change."

The organizational climate is the social milieu in which individuals work. Climate reflects the prevailing customs, mores, and social attitudes that influence or determine: behavior, adjustment, support, effectiveness, and success. Climate surveys reflect actual experiences, of how people are actually treated, regardless of stated policies. Climate surveys portray the true character of corporate cultures regarding rewards, promotions, assignments, recognition, acceptance, inclusion and power. Climate surveys say what individual black managers who want to be accepted, get ahead, and avoid conflict, may fear to say.

Surveys of black M.B.A.s present bleak pictures of their organizational climates. Over 98% disagreed that black managers had achieved equal opportunity; over 98% felt there was a lot of subtle prejudice and 48% felt prejudice was overt; 92% felt black managers had less opportunity and not even a chance to succeed as unique individuals based on performance; 90% rated the climate of support as worse than for white managers; 84% felt race had a negative impact on ratings, assignments, recognition, appraisals and promotions; over 65% stated white managers believe blacks are intellectually inferior; and only 14% believed black managers had achieved individual acceptance, and respect on a par with similar white managers.

The number one impediment perceived by black managers is negative racial attitudes by white managers. Black M.B.A.s depict their work climates as: indifferent; patronizing; reluctant to accept blacks; psychologically unhealthy; unfulfilling; supportive in words only; lacking in positive direction; hypocritical; only minority related jobs; unsupportive and characterized by tokenism.

These climate surveys depict work environments that would require pathological adjustments in order to function. No sincere organization can make the criteria for success the adoption of disturbed mental attitudes; people who attempt such adjustments become victims of their environments. Perfect human beings of any group do not exist, but if perfect people did exist, they could not succeed in such negative work climates.

The hostile organizational work environments associated with color in conjunction with a blindness or a failure to control the debilitating impact of color and race is making the difficult situation facing black managers even more formidable. I coined the term "**COLORISM**" in the Harvard Business Review article in order to focus on the obstacle of color and its underlying cultural, social, psychological, and psychoanalitic roots.

One symptom of the problem of colorism is my finding that adverse climates are creating a widespread and serious pattern of medical problems. A doctor who provides therapy for black managers advised:

> "Both black men and black women are suffering severe pain. That pain is significant for both, even if it is different. Black men, especially assertive black men, perceive on some level that their assertiveness is threatening and some attempt to mute it. A major part of the conflict that black corporate managers have is a feeling that they have to change themselves and their core personalities because of the fear that without change it will threaten others and they won't be accepted. Black men are struggling to be accepted without being castrated or suffering a modern day corporate version of lynching from whites who resent them. This is especially acute for those black men who have a picture of themselves as having to fit the American model of being brave, strong, and courageous in order to be a man".

Other Indicators

Additional numerical data from the U.S.D.O.L. show that the unemployment rate for blacks with four or more years of college jumped 108% in 1982 from 4.0% to 8.3%. Unemployment rates for other groups peaked in 1983 but subsequently declined to 1981 levels. For blacks, the rate only came down to 5.8% in 1985, a level well above 1981.

A two page January 4th, 1987, New York Times investigative report titled "The Ax falls on Equal Opportunity" pointed out that the ranks of black managers are being decimated and increasing numbers of black managers with seniority and significant levels of status are being eliminated in corporate reorganizations, down-sizings, realignments, mergers, and aquisitions. The statement of a former black female executive pictured standing in line for unemployment benefits captures the increasing desperation and despair that my research is also finding within the ranks of black managers and executives. In the words of this black female, "The whole country has gone backwards in the sense of equal opportunity. Its like a door opened and suddenly it shut in your face."

This news report and my research also find that there is a widely held view of black managers that they have little mobility within corporations. And what may come as a surprise to many is that the companies mentioned are those that have long had outside reputations for being among the leaders in providing equal opportunity. The New York times mentions leading names such as AT&T, IT&T, CBS, Metropolitan Life Insurance, G.E., and St. Regis Corporation. And while each of these companies denies these accusations, executive recruiters report that while there is little or no demand for black managers, resumes from recently out of work black managers are flooding their offices.

The Dynamics Of Exclusion

The numbers do not describe the qualitative milieu in which increasing numbers of black managers find themselves. Psychologically and medically, too many of these work mileaus are being found to be corrosive, consuming, destructive and Pyrrhic.

A 1984 national study of the Banking industry noted: "regardless of how well educated, articulate, or polished, aggressive black male managers experienced a systematically more difficult time and were provoked to resign or were fired. The industry was choosing women, white women to a larger extent, but also black women over black males. Valued traits in white males such as aggressiveness were the cause for rejection of black males. Unless a black comes 360 degrees full circle and bends over backwards to prostitute other blacks and minorities to their satisfaction, they're (whites) not going to feel comfortable with you. You have to make them aware that you are in total allegiance with them and against other blacks and when a few blacks do reach high levels, they become inaccessible".

A 1984 study of Jewish executives stated: "Jews are doing well, but there is a deep seated prejudice and dislike for black managers. Moreover there is little government pressure on the internal corporate leadership needed to overcome discrimination. Consequently, blacks are lagging behind as women make greater progress. The changes have been tremendous for women, but for blacks, it's harder now than it was a few years ago. One white female stated 'We sort of bend over backwards to like them (blacks), but basically we still don't.' A white male stated 'If a white male had two comparable candidates in terms of ability, one black male and one white woman, consciously or unconsciously he'd pick the white woman'".

A compendium of data support my research findings and point to unhealthy work climates, organizational cultures requiring self destructive behavior, and unconstrained subjectivity as the obstacles to equal upward mobility. Black managers are not receiving the organizational support required by all managers in order to succeed. And indifferent to coldly hostile work environments are making managerial careers less and less viable for black managers.

The issue that these data pose for policy makers is whether these trends are consistent with the kind of nation that we want to build? How shameful, tragic, and bitterly ironic if equal opportunity policies specifically implemented to alleviate the social conflict, the lack of opportunity, and the almost total exclusion of black Americans creates greatly increased opportunity for all other groups that had previously been excluded (but to lesser degrees than blacks) but still leaves black Americans, no matter how well qualified, on the bottom, left out and excluded. And how chillingly fearful for American society and stable black families if blacks, and particularly black males, no matter how well educated and motivated are not accepted and are not allowed to grow, prosper or succed within large corporations. These findings are disturbing and frightening for America.

Policy makers must consider the question of how we motivate those blacks trapped in poverty and swelling the ranks of the growing black underclass to work for self improvement if those who have followed this direction are not experiencing the expected rewards of success?

Policy makers must also consider what, if any, are the relationships between the unemployed, criminally prone, narcotically involved black males depicted by the Bill Moyers special and commented upon by Senator Moynihan in 1986 and these well educated, responsible and highly motivated black males? Are the obstacles imposed upon some black males in some situations in America so formidable as to bear a major share of the responsibility for this American problem?

Policy makers must ask themselves and each other how we continue to rationalize and to hide from unpleasant truths by pointing out that the problem lies with each individual because they are just not educationally qualified? These M.B.A.s are from Americas best schools and many graduated withhonors.

And finally, policy makers must ask how we Americans hide from the embarrassing international awareness that is sure to come, that color, and not merit or worth, in contradiction to our ideals, our values, our laws and our rhetoric, is still the determinant of success in America?

The Issue That Never Was: Equal Upward Mobility By The Best Qualified Black Managers

Focus on the progress and accession of blacks in managerial and executive positions within corporations is an area that has been largely ignored by government enforcement agencies. In a 1971 interview with M.B.A. Magazine, Clifford Alexander, speaking from his perspective as Chairman of the equal employment opportunity commission said: "We ought to spend a lot more time on the white collar

> arena, because that's where the bulk of the jobs are. In the cities where most blacks live today, you have huge numbers of white collar jobs. Until blacks hold low, middle and upper white collar jobs in those central cities, blacks will not be part of the capitalistic system. Right now, you have funny money programs like The National Alliance Of Businessmen, which bring blacks to work because they need more workers, but which do not bring blacks into middle management positions. And blacks can see that as easily as whites, if not more easily."

Similarly, in a 1983 television interview, Eleanor Holmes Norton, also a former chairman of the Equal Employment Opportunity Commission concurred with Mr. Alexanders observations. She pointed out that while the central focus of government enforcement had been the large numbers of jobs for minorities at lower levels, that the dearth of blacks in the executive suite was recognized as a lucrative area for future enforcement review.

However, while the progress of black managers has not been widely focused upon government sponsored studies have indicated the existence of major obstacles. A 1973 study done for the Department of Labor, Manpower Research Monogram Number 26, titled "A Study Of Black Male Professionals In Industry" confirmed the EEOC's perception that there had been a the shift from hiring discrimination to one of treatment discrimination after hiring. Three out of five surveyed black men felt they as blacks did not have the same opportunities as whites in their firms. They saw a ceiling on how far they could go that was rather low and the fact that so few attained managerial status and average salaries did not increase beyond the ninth year of service, suggested the respondents evaluation of their situation was accurate. And if the future were to mirror the past, their attitudes were realistic. Slightly more than half of the respondents white supervisors who agreed to be interviewed reported that their firm did not offer equal opportunity for blacks. One of the white managers pointed out that management tends to be reluctant to accept blacks.

Rampant And Misleading Opinions Not Supported By Research

At a Consultation-Hearing of the United States Commission on Civil Rights of March 6-7th, 1985, four expert witnesses appeared. These witnesses were Dr. Nathan Glazer, A doctorate in sociology from Columbia University and professor of education and sociology at Harvard University; Larry M. Lavinsky law partner, active with the Anti-Defamation League of B'nai Brith for over 17 years, coauthor of briefs to the Supreme Court in DeFunnis v. Odegaard, Regents of the University of California v. Bakke, and Kaiser v. webber, a graduate of New York University School of Law; Finis Welch, Chairman Of The board, Union Research Corporation, and co-author of the February 1986 Rand Report titled: "Closing The Gap: Forty Years Of Black Economic Progress"; and Dr. Jonathan Leonard, assistant professor of industrial relations at the University of California at Berkley and a Ph.D. in economics. When asked whether discrimination in employment today is the exception or the rule, three of these four experts, the exception being Dr. Leonard, gave their "opinion" that discrimination is the exception rather than the rule.

These opinions are in contradistinction to conclusions based upon research. And these mistaken opinions illustrate the danger of relying upon opinion rather that data in making policy evaluations.

The current void of accurate research is at risk of being filled by wrong opinions, (whether such opinions are innocent or self serving). And regardless of expertise, even experts have personal biases and self interests to contend with. The current void in objective non self fulfilling research is an impediment to inlightened policy.

Two recent research studies also illustrate the imperative of accurate reliable information. These reports are "**Closing The Gap**: Forty Years of Economic Progress for Blacks" completed for the U.S. Department of Labor in February 1986 by Rand and "**The Economic Progress Of Black Men In America**" completed in October 1986 based on the same data for The U.S. Commission On Civil Rights. Both reports are at risk of being misleading.

My research finds that the overwhelming majority (over 98% of black M.B.A.s from top graduate schools of business) state that their companies have not achieved equal opportunity. There is also an overwhelming belief that regardless of individual intellect, education or competence, vigorous government enforcement is still a critical determinant of whether even the best prepared black managers get a chance to demonstrate their skills. And regardless of qualifications, there is an overwhelming perception of ceilings on promotions, continuing limits on opportunity, and discrimination in pay, appraisals, assignments, career development, supervisory support and career success.

These studies also have a different-discounted view of affirmative action than the view held by black managers. These studies state:

> **"Affirmative action cannot be the whole story nor, for that matter, a very large part of it. The principle reason is that the economic benefits of black schooling began long before the affirmative action pressures of the last two decades.., the narrowing of racial differences in the benefits from education was as large during the twenty years from 1940 to 1960 as it was in the twenty years after 1960. ...improving relative quality of black schools is the underlying cause of the increase in black economic benefits from education relative to those of whites. ...(And) black education is identified as the key factor elevating the long run economic status of black men. ... The final wage impact of affirmative action was a pro-skill bias. The essential purpose of affirmative action is to increase employment of blacks where they had previously been scarce. ... Young college educated blacks were the main beneficiaries of affirmative action....The real prizes in our economic race are won in the private sector, and the black elite have now joined the game. ...there is now substantial evidence that salary increases and promotions for the black elite will be at least as rapid as for their white competitors."**

It is also unfortunately that these reports combine and confuse equal opportunity with issues of the "disadvantaged". The civil Rights Act dealt only with equal opportunity. Executive Order 11365 in 1967 established "The National Advisory Commission On Civil Disorders" which led to special programs to aid the disadvantaged in voluntary efforts such as programs by the National Alliance of Businessmen.

The employment and opportunity issues of "all blacks" cannot be singularly dealt with as if there was a monolithic black mass in need of one cure. The growing black underclass is a matter in urgent need of national attention, but that is a different issue than the issue of equal opportunity for overly and fully qualified blacks. The only relationship between the two issues is the prejudice against skin color. The purpose of the Civil Rights Act was to assure all Americans full citizenship including rights to equal employment opportunity. Nowhere does it state the basic aim of achieving reductions in black poverty. But the Rand Report states "The final concern about continued black progress is the unfocused public policy debate on race. This debate has lost sight of the basic aim of achieving long run permanent reductions in black poverty. ... the safest and surest route to permanent black economic mobility lies in additional education in a good school."

There is always a need for better education, but a prescription of better education is not the cure for Americas black managers educated with advanced degrees who are encountering overwhelming prejudice. There is no blinking the issue, that prejudice is the culprit, and focused measures to control prejudice are the cure. In the managerial and professional ranks, effectiveness and accession is in large part a function of the support and behavior of the majority. If majority behavior is impeding success, the issue we must focus on is how to assure positive majority behavior, not how to correct short-comings in every minority person.

SECTION III

THE NATIONAL STRATEGY THAT MISSHAPED AMERICAS BELIEFS

Jews As Victims And Opponents Of Prejudice And Discrimination

The Jewish people have intimately known the pain, tragedy, and massive losses of life associated with prejudice as have few other groups of people. The pattern of prejudice and discrimination against Jews is traceable from slavery in ancient Egypt, through the European Inquisition and Pogroms and continues through the horrors of the holocaust and genocide. Jews have a history of persecution based on prejudice and discrimination that is a horror story.

If there was an objective scale to measure mankinds' historic inhumanity toward his fellow man, Jews would be among the groups on a world basis that have suffered the most in terms of pain and death from prejudice, discrimination, and persecution.

Racially, Jews are considered by social and biological scientists and anthropologists, to be Caucasians. Jews only differ culturally from many other whites because of religious beliefs and customs. But because of religious beliefs, Jews have a history of persecution. History records a long and continuing record of mans inhumanity to his fellow based upon differences in religious beliefs. Christ was a Jew, but Christians have persecuted Jews since the death of Christ because Jews were accused of being Christ killers.

It is important to note how in the history of humankind, differences that cannot on a rational basis differentiate between peoples physical or mental worth -- as in the case of Jews -- have been the foundation of hatred. The history of Jews illustrates how differences that exist in the minds of humans -- differences in ideologies, values, and beliefs -- despite the absence of physical differences have led to persecution and death. Differences in religious beliefs may be manifested in different customs of worship, law, eating, marriage, grooming, and dressing but such differences are rooted in differences in what people believe, their ideologies and their values moreso than in biological or other scientific differences.

A large part of any societies culture exists in the minds of the people in that society in the form of their beliefs, values, and judgments of right and wrong or of the intrinsic worth and relative value of other people. But these cultural beliefs are among the most important elements within any culture. For cultural beliefs that exist within the human mind are the emotional basis for evaluating, valuing and treating people who we perceive as different than ourselves in a different manner than we ourselves want to be treated.

Jewish Americans have historically been in the forefront of efforts aimed at achieving increased democratization, equal opportunity and civil liberties. The world history of Jews has contributed to a uniquely deep intellectual involvement professionally and academically in understanding and combating prejudice and discrimination because unlike many other white Americans, prejudice and discrimination were more than abstract esoteric concepts; Jews have lived and died around these issues. The pain, suffering and human costs of prejudice, bigotry and hatred are real and current history to Jews.

Because of their personal ideological and intellectual interests in prejudice, and their uniquely heavy representation on college faculties, many of the professional and academic leaders in social science related fields have been and continue to be Jewish. The list of such leaders who were Jewish is very extensive and it extends from giants now deceased like Franz Boas in anthroplology and Otto Klineberg in social psychology to current leaders in their fields like Stephen Jay Gould and Leon Kamin.

The shared empathetic stand against prejudice and discrimination by blacks and Jews developed into a special bond against the common enemy of bigotry. However, the obstacle of color was one issue that did not impact Jews as it did black Americans. At various times throughout history, Jews have been forced to dress in certain distinctive ways or to carry identification cards in order to be identified and singled out. For black Americans, their identity cards of skin color and African features were permanent, unremovable, and symbolic of different mental schemata in America than those faced by Jews.

Jews were stereotyped as untrustworthy and money hungry but very smart intellectually and shrewd businessmen. Blacks were stereotyped as physically offensive because of their color and African features, as intellectually dumber than all white people, and as immoral and undependable. The differences in impact, intensity, social roles, and the nature of the discrimination against blacks was therefore more acute than the discrimination against Jews. Therefore the distance required to be traveled by American society in order to be tolerant and accepting of Jews was far less than the distance required to be accepting of black Americans. In fact, the data indicates that in America, black Americans face greater obstacles to acceptance by society than any other group whether minority or white.

Finally, honesty requires that we not overlook the unfortunate prejudice that exists within each group. Some blacks are not immune to anti-semitism and some Jews are not immune to color prejudice. Both blacks and Jews grow up in environments that reflect these biases and neither blacks nor Jews are immune. So, in spite of deep intellectual empathy and support, there were always some strains and tensions between blacks and Jews. But few if any other Americans have historically supported black progress more than Jews.

Jews In Search Of Understanding Prejudice 7

Jewish scholars have been leaders in actively pursuing the study of prejudice and discrimination. This study has led them to conclude that an aroused conscience means little unless it results in systematic searching for answers. In their view, history has demonstrated that the mere passage of time has not solved the problem of destructive aggressions that flow from prejudice. "Prejudice is one of the problems of our times for which everyone has a theory but no one an answer." They also concluded that in order to understand prejudice, an interdisciplinary research approach to problems is required since prejudice involves both individual personality traits and the social situation including the external stimuli that moves people to act or react.

These researchers also agree that an individuals ideology is an aspect of their personality that was developed in childhood and therefore reflects the character of the persons family. But although they are not well understood and therefore remain shadowy, the culture and institutional structure of society are important contextual influences. And there is a need to take socio-cultural forces more into account along with the growth and decline that occurs to adults throughout their life cycles without neglecting the role of personality. In other words: "The cause of irrational hostility is in the last instance to be found in social frustration and injustice. Eradication of prejudice means re-education, scientifically planned on the basis of understanding scientifically arrived at."

So after completing studies focused on individual personality, the research was expanded to include groups and institutions as units of study. Understanding of both individual dynamics and group dynamics are required since "'the individual in vacuo is but an artifact', and it is necessary to explain individual behavior in terms of social antecedents and concomitants." The current focus on understanding prejudice involves studying group pressures and social roles within the context of given social situations.

The History Of Jews And Quotas

Prior to the immigration of Eastern European Jews, Americas Jewish population was relatively small, numbering less than 250,000 in a population of 63 million, less than 1%. Nathan Glazer notes, "before 1880 or 1890 there were too few American Jews for them to constitute a question."[8] By 1924, when America imposed immigration quotas, there were four million Jews with major concentrations in large cities in the Northeast. The port of arrival for most immigrants, New York, grew from 80,000 Jews in 1880 to 1,225,000 Jews in 1910.[9] The visible cultural differences, including language, religion, and obvious poverty contributed to xenophobia and increasing patterns of anti Jewish discrimination and intolerance.

A major value in Jewish culture is a penchant for education. And as more and more Jews enrolled in City College Of New York, it acquired a reputation for being a "Jewish school." In fact, by 1920 both City College and Hunter College were between 80 and 90 percent Jewish. Other eastern colleges also showed rapid increases in Jewish enrollment. Before the end of World war I, Columbia had a Jewish enrollment of 40%, NYU was higher, and Harvard had 20 percent.[10] A number of colleges adopted policies designed to reduce and control their Jewish populations with some form or another of "Quotas." At Columbia, Jewish enrollment declined from 40 to 22 percent and NYU sharply reduced its Jewish students.[11] In 1930 Rutgers admitted only 33 Jewish students in order to "equalize the proportion" in the college. Princeton is rumored to have used a quota based on the percent of Jews in the United States and Dartmouth limited Jews to 7 percent.

By the 1920's The President of Harvard, Abbott Lawrence Lowell pervieved the increasing Jewish enrollment at Harvard reached levels that threatened to alter the traditional constituency and character of the college and thereby created a "Jewish problem". Jewish enrollment at harvard had increased from 6 percent in 1908 to 20 percent in 1922.[12] In June 1922, Harvard issued an official statement concerning "talk about the proportion of Jews at the college". The logic presented was that "Quotas" were in the best interests of Jews. The June 17, 1922 New York Times explained quotas as a method of reducing anti-semitism: "The anti-Semitic feeling among the students is increasing, and it grows in proportion to the increase in the number of Jews. If their number should become 40% of the student body, the race feeling would become intense. ... if every college ... would take a limited proportion of Jews, I suspect we should go a long way toward eliminating race feeling among the students, and as these students passed out into the world, eliminating it in the community.[13] By 1922 Columbia and New York University had begun covertly restricting Jewish enrollment by relying on character tests and regional admissions quotas.

With this background, we can understand how for many Jews, "quotas" symbolized and became mental shorthand for anti-Jewish attitudes. The symbolic meaning of quotas to Jews, based on experience and history translated into efforts which for Jews were aimed at exclusion, reduced opportunity, and anti-Jewish discrimination.

Ironically, the methods intended to limit the number of Jews at Harvard were ineffective since the proportion of Jews at Harvard actually increased from 21.7 percent in 1922 to 27.1 percent in 1925. Steinberg notes that "though indirect forms of discrimination persist, Jews today are numerically overrepresented in the nations leading institutions, both as faculty and students."[14] At Harvard, for example, David Reisman estimated in 1973 that Jews comprise about one-quarter of the student body and a third of the faculty.[15]

Though the objectivity of admissions tests and other selection criteria are a matter of debate rather than agreement, the mere concept of "meritocracy benefitted Jews because they had the economic and educational prerequisites to compete effectively for scarce places at all levels of higher education. However, those blacks and other minorities who had to cope with the disabilities of economic disadvantage gained little from the elimination of overt discrimination. The cumulative disadvantages of the past, including inferior schooling, left them unprepared to compete on the same basis with members of more priveleged groups. Consequently the routine application of more routine criteria resulted in a pattern of exclusion, or institutionalized racism, that vitiated the democratic claims of the merit system."[16]

Creation And Promotion Of "The Ideology Of Reverse Discrimination"[17]

While it is not widely known, the concept and terminology of "Reverse Discrimination" was not an unplanned or happenstantial development. The reverse discrimination movement was a well organized, coordinated and highly successful nationwide movement by a group of university academicians, some of whom are very famous and have national name recognition. The key success of their action was the redefinition of affirmative efforts to overcome unique impediments facing specific groups as reverse discrimination against innocent white males. Those efforts (affirmative actions) to achieve a level playing field by addressing issues and obstacles not faced by white males were redefined as a quota system constituting reverse discrimination against better qualified white males. This redefinition and convolution of terminology and meanings creates a major obstacle to conducting rational, knowledgeable and unemotional analysis because of the negative symbolism and confusion now attributed to words and phrases such as affirmative action, goals, and quotas.

Without awareness of the motivations and tactics by which this convolution of terms was accomplished, discussion may deteriorate because of people talking past -- rather than communicating with and understanding each other. A sketch of how the concept and terminology of reverse discrimination were concieved, created, positioned, and leveraged by a nationwide network of academicians follows.

The perceived threat by some Jewish intellectuals from quotas lost sight of the fact that "affirmative action quotas" were aimed at achieving full inclusion of all Americans, and to end the traditional exclusion of colored minorities. These inclusive quotas were not intended to exclude as did those in eastern colleges in the 1920's, but to extend democratic behavior and the educational equality that is associated with economic equality. Lowell sought to maintain "preferential treatment for the priveleged WASP upper-class", but affirmative action programs were aimed at groups that would otherwise be denied educational opportunity. Affirmative action was consonant with democratic ideals.[18]

The exclusion of racial minorities was historically based on stigmatizations of inferiority and undesirability and was part of a systemic subordination. While some whites would not recieve positions they would have received without competition from racial minorities, this is not akin to the racial stigma faced by minorities of color that led to almost total exclusion. And as members of the in power majority, whites are not faced with the hopelessness and powerlessness of an overwhelming and pervasive systemic exclusion. Jews, being overly represented in Academia and in other highly paid professions, but a relatively small (2-3%) share of the American population sensed a particularly large threat, and some acted to preempt affirmative action for fear they would pay disproportionately for the opportunities gained by colored minorities.

Steinberg concludes: "the question is whether Jews as a community will erect barriers behind them to protect their hard-won gains, or whether they will continue their historic battle against privelege."

A Motivation Of Fears Developed In Russia

In 1968, the turmoil on college campuses was watched very uneasily by a physics professor at Bronx Community College, Miro Todorovich. Todorvich had immigrated from Yugoslavia in the early 50's and being a product of this communist totalitarian culture and veteran of the imposed Russian rule that he had seen and experienced, he was concerned about the radical left student activities. In Hungary, he had been redirected against his will from teaching philosophy to teaching physics. The concerns of losing University autonomy and independence that he developed under a communist regime, moved him to action. In December 1968, he sent a letter to 3000 other academicians calling for the creation of **University Centers for** **R**ational **A**lternatives [**UCRA**] with the purpose of protecting universities from what he perceived as internal and external threats. 175 responses were received and UCRA was formed.

By the spring of 1969, after campus unrest and troubles at Harvard, Columbia, City College and the startling appearance on the Cornell Campus of Black students sporting guns, the new organization titled **University Centers for Rational Alternatives [UCRA]** urged a hard line toward disruption. As events changed, so did the goals and membership on which they relied. From 1969 to October 1971, the concern was internal threats to the University.

Under government pressure to increase the representation of racial minorities in their enrollments, colleges and universities launched affirmative action programs in the 60's. At times a fixed number of places were designated or more often, a "goal" was established that would be sought after and met if if there were enough qualified racial minorities, a categorization which did not include Jews. In both cases, some minority students who would not have been routinely admitted under traditional selection procedures, began to be admitted. From the Jewish perspective, a perspective of a relatively small group that was numerically overrepresented in institutions of higher learning, Jews were threatened by the suggestion that groups should be represented relative to their representation in the general population. "There was no room for eqivocation or inconsistency on the principle that racial or ethnic considerations should be irrelevant to educational opportunity. As a lawyer for the Anti-

Defamation League wrote in the New York Times: "The stakes are far too high for a society trying to rid itself of racial discrimination to accept on faith the claim that the only way to achieve equality in the professions is by practicing still more discrimination."[19]

After October 1971, "affirmative action" was first mentioned in the UCRA's newsletter, MEASURE. The concern of UCRA shifted from internal threats posed by campus radicals to affirmative action as an external government threat. Affirmative action was perceived as a threat to and the antithesis of merit and qualification. Nicholas Capaldi, a professor of philosophy at Queens College in 1985, and author of "Out Of Order: affirmative Action and the Crisis of Doctrinaire Liberalism"[20], wrote an article at this time titled "Why UCRA? that suggested future organizational goals.

The October 1971 UCRA newsletter also carried the first article on affirmative action written by Sidney Hook, titled, "Discrimination, Color Blindness, and the Quota System." This article represented the first step in the popularization of the concept of affirmative action as a quota system. This concept of affirmative action as a quota system was later picked up and followed by the New York Times when they published their first editorial on affirmative action.

A group rooted in academia that included some of Americas leading intellectual elite and whose original purpose had been to defend academic freedom and University autonomy from disruption; refocused its' significant intellectual powers into preempting any changes in student admissions or faculty selection criteria. Although campuses returned to peace and tranquility in the early 70's, political pressures had left in their wake a system of open admissions for students at the City University Of New York. Student self selection without performance criteria relative to some standard of excellence reinforced UCRA's underlying fear that ultimately the quality of American university teaching, research and curriculums would suffer. The ultimate fear was that faculty appointments would, in the future, be based on quotas rather than solid knowledge and research competence.

With the reduction in campus radicalism as a threat and as a basis for organization and action, discussing the perceived threat from quotas provided the rationale for selecting affirmative action as the new source of danger to University life. The first mention of affirmative action in the newsletter was in October 1971. At UCRA's first symposium in February 1972 at Rockefeller University, Quotas and Affirmative Action were selected and focused upon as sources of threat. By October 1972, the entire newsletter was dedicated to the subject.

Some faculty members began to question UCRA's goals and emphasis. For example, excerpts of an October 1973, response stated: "I contributed to your endeavor a year or two ago....I am now dismayed and even repelled by your campaign against affirmative action....you have taken what seems to be a paranoiac attitude....and are running the issue into the ground."

> "Can there be any doubt in your minds that blacks and members of other minority groups, as well as women have been denied opportunities....?"

> "To continue on this subject in issue after issue ad nauseum is to alienate a great number of people who must begin to doubt that you share the goal of our public policy, which is to remove discrimination from the academy".

David B. Johnson
Professor of Economics
University of Michigan

With the increasing questioning of UCRA's goals and its singular focus on affirmative action, a subgroup of UCRA dedicated exclusively to affirmative action was formed, the Committee on Academic Nondiscrimination and Integrity (CANI) which was formally announced in October 1973. The leadership of CANI included people such as Sidney Hook, Gertrude Himmelfarb, Isadore Blumen (Cornell), Tom Sowell, Nathan Glazer (Harvard), Jack Hirschleifer (UCLA), Paul Kurtz and Howard Adelson (CCNY), Brunno Bettelheim, and other well known academics. There was much overlap in the leadership of CANI and in UCRA. Miro Todorovich the Executive Secretary of UCRA was also the coordinator of CANI. Without UCRA the academic protest movement against affirmative action would not have materialized as rapidly nor had such extensive nationwide media and academic impact.

A 1976 U. S. News and World Report ran a feature story titled: "Growing Debate - Reverse Discrimination - Has It Gone Too Far? and in 1977 Newsweek ran a cover story under a front page headline of "Reverse Discrimination." The cover showed a tug of war between a white and a black student over a college diploma.

In a New York Times story on march 18, 1977, Secretary of HEW, Califano stated his approval of a "quota" system in hiring. By 8 p.m., a draft letter to President Jimmy Carter had been drafted by Sidney Hook in California and was in the UCRA office in Washington D.C. for consideration and signature by 100 UCRA members. Freedom House provided quarters for a press conference and a call from a New York Times reporter to Secretary Califano led to a retraction of his previous position and a favorable editorial for CANI in the Times. Nathan Glazer observed that CANI "forced the government to more conscious of its affirmative action policies" and CANI in conjunction with the Anti-Defamation League and other Jewish Organizations caused the government to stop proceeding in the direction of preferential treatment (affirmative action) on the basis of race and sex. Todorovich layed out the following sequence of steps and tactics pursued by CANI to stop affirmative action:

1) Approach the Regulatory Agencies
2) Approach The central government and then congress
3) Use of court cases

o CANI was a prime mover in getting the O'Hara Special Subcommittee Hearings on Education held in August 1974. Many CANI members and organizations agreeing with their position such as various Jewish groups spoke. This subcommittee hearing became the basis for subsequent Labor Department and Civil Rights Commission hearings.

o CANI (represented by Todorovich, Edgar Borgatta and Tom Sowell) testified at the September 1975 Commission on Civil Rights Hearings.

o Met with President Gerald Ford in September 1975 (Paul Seabury and Tom Sowell met with President Ford, the Secretaries Of Labor, Transportation and HEW)

o Testified before the fact finding hearing of the OFCCP of The U.S.D.C.L. (represented by Todorovich).

o Court cases in which CANI interceded with amicus briefs include Defunnis vs. Odegaard (73), Virginnia Commonwealth University v.s. Cramer (76), and Baake vs. Regents of the University of California. It was understood after the Baake case, the next target was to get executive order #4 revised.

The list of successes claimed by CANI included:

1. Support of court cases and the submission of legal briefs using new definitions and terminology for quotas and redefining affirmative action as Reverse discrimination.

2. Creating the ideology and popularizing the symbolic term of "reverse discrimination".

3. Bringing HEW, Office of Civil Rights, to a standstill in enforcing affirmative action in higher education.

4. Popularizing the idea of "reverse discrimination" by defining affirmative action as a quota system constituting reverse discrimination (a redefinition and reformulation of the issues), an ideology was formulated by which other activities would be judged.

In the words of Todorovich, "If there were three dozen articles on the issue, then probably 32 were ours...I could have traced 85% of the data from this office, 10% from ADL, and the rest from others. From 1975 on, the whole thing began mushrooming... Hadn't we given the tone we gave, possibly the whole discussion would have gone in another way... ".

The DILEMMA Presented To Jews By "Affirmative Action".

The legal director of the American Jewish Committees analysis of the Bakke decision puts the issues and dilemmas of Jews into perspective. Samuel Rabinove saw a potential for some Jewish employees to be hurt by the implementation of affirmative action plans but he also saw such plans as potential weapons in overcoming discrimination against Jews[21].

The schism in the views of Jews and some blacks on quotas was seen as an issue, but an issue that Jews believed would pass because blacks would benefit in the long run from a lack of quotas. Mr. Rabinove cited the reaction of the Amsterdam news that "blacks have now lost the case may further divide blacks from Jews at the national and local levels" as excusable as "an ill advised, impulsive response", nevertheless as important because it "epitomized the intensity of feeling on the part of many blacks in support of quotas and racial preference, as well as their conviction that the Jews have betrayed them on this vital issue". Rabinove argued that the courts rejection of quotas would advance the interests of blacks further in the long run than if the court had upheld such quotas.

> **"For one thing there is much truth in the argument of black economist Dr. Thomas Sowell that the message of quotas 'loud and clear, is that black people just don't have it,' that quotas signal 'incompetence, and black achievement becomes synonymous with charity or payoffs.'"**

The subsequent analysis for the American Jewish committee focused on the central issue from the Jewish perspective: the Jewish fear of quotas.

> "Actually, it is apparent that many of the non-Jewish white ethnic groups are presently 'underrepresented' in the learned professions. If achieving group proportionality comes to be seen as a desirable societal goal, this could hardly auger well for the 2.7 percent of the population who identify as Jews. The danger was dramatically demonstrated by an episode last November, when New York State Senator John Calandra complained that while Italian-Americans comprise 25 percent of the City University student body, they hold only four percent of the faculty posts. 'Every other ethnic group starts yelling about quotas,' he said, 'I want the Italo-Americans to get what everybody else has. Otherwise I'll fight their budget in Albany.'"

And finally, Rabinove recognized that rhetoric and polemics aside, the debate over quotas was a strawman that camouflaged and hid prejudice against colored minorities. He wrote:

> "A personal note: In the course of several years of laboring in the vineyard of affirmative action in general and of the Bakke case in particular, it has become clear to me that a good many of those in the pro-Bakke camp were and are 'closet' racists, people who do not really want to help blacks, Hispanics or Nativw Americans. Some are of the same ideological bent as those who, for many years, accepted with equanimity, if not approval, the pervasive rejection and exclusion of people of color from everything good in American society. In their meanness of spirit, they are inclined to blame the victims for their plight and to begrudge them any compensatory or remedial help whatever to enable them to overcome their genuine handicaps. Others secretly share the contemptible views of Dr. William Shockley that blacks, on the whole, are inherently inferior to whites in intelligence and nothing can or should be done about this. Still others point out that, in contrast to the relatively low average achievement levels of black students, Asian Americans have demonstrated high upward academic mobility. ...In responding to this type of argument it is necessary to stress, as Justice Marshall did in his eloquent opinion in Bakke, that no other ethnic group in this country was enslaved, with the multiple afflictions that that has meant for the descendants of the enslaved."

More recently, there appears to be a slowly dawning awareness by even some of the initial leaders and the most influential founders of the UCRA and CANI organizations, that the impediments and obstacles faced by some groups are indeed so ominous, that special actions will be required if America is ever to trend towards a reality of equal opportunity. Dr. Nathan Glazer, A doctorate in sociology from Columbia University and professor of education and sociology at Harvard University is a person who has been actively involved in the UCRA and CANI discussions from the outset and he has written extensively against quotas. However, in a 1985 Consultation/Hearing of the United States Commission on Civil Rights**22** he stated:

> "Affirmative action has worked in some measure, it's a question of whether we still need what is an expensive, intrusive and complicated operation.
>
> Because of the forces that keep in place a system of employment and promotion that on the whole, does not discriminate against minorities and women - and introduce many elements of preference - not much would change (if we considered a policy different from preferential affirmative action). Procedures that require fairness have in large measure been institutionalized. I would not deny the role of preferential affirmative action in institutionalizing these procedures, along with all the other elements I have listed. And if someone now wants to attack me for inconsistency, they would be quite right in saying I attacked affirmative action quite early, but now I'm taking the position that these institutionalized measures in existence will stay in existence.
>
> Women and blacks increasingly are plugged into the informal information and lobbying networks that remain critical in hiring and promotion decisions.... It would be revealing to consider what the effects of 4 years of somewhat slackened enforcement, and more than that, the expectation of slackened enforcement, has been. The reality of looser enforcement and the expectation of looser enforcement has, I assume not been without effect, but I think it has been of much less effect than the supporters of strong enforcement believe.
>
> **For the black group in particular - the consequences of a departure from preferential affirmative action could be quite serious. And this is, I would say largely because of tests. tests play such an important role in employment and promotion, and in certain kinds of tests blacks do poorly. ...I could well see the restriction of affirmative action to the groups that need it most or the group that needs it most. I could also well**

> **see - and I would urge - that we set a time limit on how long such policies operate. The idea that preferential affirmative action is a policy for a limited time is a reasonable one to put into the public arena. It would protect blacks from the most radical effects of a cold-turkey abandonment."**

Dr. Jonathan Leonard, assistant professor of industrial relations at the University of California at Berkley and a Ph.D. in economics stated: "My finding and the findings of others, that affirmative action has been effective raises the most controversial question: Has this reduced discrimination or has it gone beyond that and started to induce reverse discrimination?" Dr. Leonard also cited his finding that "establishments that have had class action suits under Title VII increased their black employment tremendously, and Title VII has a much larger impact on given establishments than does affirmative action. But the establishments with the lowest proportion of minorities or females did not have a significantly higher probability of coming under a compliance review by the OFCCP between '74 and '80. I think that could be improved."

The Impact Of The Womens Movement

There was a major shift in the mix of new employees entering the work force in the mid 70's. Between 1974 and 1977, 53% were white women. 26% were white men. 5% were black women, and black men experienced no net gain in their numbers.[23]

Some white women stated their belief that the obstacles white women faced were greater than those faced by racial minorities. In 1978, the Minneapolis-St. Paul Chapter of The National Organization for Women (NOW) reported that "disadvantages due to sex are greater than those due to race" and concluded that "current affirmative action efforts are directed disproportionately toward racial minorities."[24]

However, overwhelming evidence indicates that the obstacle of color -- **COLORISM** -- is proving to be a greater obstacle to upward mobility and career success than sexism or any other obstacle. A 1963 research report of 2000 businessmen, published in The Harvard Business Review, and comducted by the National Conference Of Christians And Jews found that race was more of a deterrent to promotion than any other factor.[25]

This analysis found that the greatest difference between ideal and actual promotion practice occured in the area of equality of opportunity based on individual merit. "**Race: Negro is the one characteristic of a candidate for promotion where principle most frequently varies from practice." 87% of the respondents answered that Race: Negro was reason to be passed over for promotion. Moreover, four out of five respondents believed that "individual executives can interpret equal opportunity policies to suit their own beliefs.**"

Thus identifying attitudes of individual managers was seen as a critical factor in the successful implementation of equal opportunity policies involving race. 9% of these respondents did not believe that being Negro **did not** affect promotion while 62% believed that it **should not** but was relevant, and **did affect promotion**.

These findings reflect the major contradictions between corporate ideals and corporate realities at the very outset of EEO as law. Stated policy was, then as now, not necessarily the reality.

A 1979 study evaluated relative progress at one large pacesetting company. The study by the Wharton Industrial Research Unit titled "The Impact of the AT&T-EEO Consent Decree" concluded: "**Both in absolute and percentage gains, white females were the principle gainers. What this means for now and for the future is continued increasing competition for minorities who must compete not only against white males but against white females as well. Moreover, white females are, like minorities, a protected group and thus have affirmative action support for special treatment. This is likely to continue to push women ahead and to make minorities lagging gainers despite the belief of many that minority employment is the far greater social problem. We also support equal opportunity for females, but by setting quotas for females, the government may well have set back minorities who aspire to better jobs.**"

There are also other indicators of an advantage held by women over minorities. For example in a 1979 survey of almost 300 corporate managers 51% felt women had the best chance of making significant strides in employment compared to 21% who felt minorities had the better chance. And 50% of these executives felt women will have an easier time being accepted in the ranks of senior management while only 15% felt minorities would have an easier time. 60% of 286 respondents felt women would have an easier time entering senior management ranks in the next 5 years (1984), 9% felt blacks would, and 31% felt both would.26

A 1980 reader survey of Black Enterprise Magazine, a universe of black professionals, supported the preceeding survey of white executives perceptions that white females were experiencing an advantage over blacks. 70% of the readership respondents answered "yes" to the question that white females are taking the jobs of blacks.

Finally, in "**Black Managers: The Dream Deferred**" my data led me to point out that white females face many obstacles which in some ways are similar to those faced by black managers, but there is a **tendency to promote white females in lieu of, rather than in addition to black and other minority managers.**

White females face obstacles to equal opportunity that must be removed. But if white female job opportunity is allowed to become a substitute for black and other minority equal opportunity, rather than one equal opportunity objective among a set of objectives, we risk moving in the direction of a system akin to corporate apartheid: all white -- men and women -- in the positions of leadership. And blacks and other minorities of color relegated to positions of subordinancy. In this eventuality, "**COLORISM**", the obstacle of color in America that led to black - white conflict and was the impetus for equal opportunity will continue to remain unsolved.

SECTION IV

EVOLVING AGENCY DEVELOPMENTS & SHIFTING GOVERNMENT POSTURES

The intensity and direction of enforcement and support by the various government agencies involved in equal opportunity has shifted dramatically since the passage of the Civil Rights Act. Passage of a law is one issue but effective enforcement of the law and how the law is interpreted are other issues. Government posture and activities have **a powerful influence and cause great impact** on our societies individual, group and institutional beliefs, activities, and behaviors. Official government positions carry a sense of the "right" and the "fair" thing to do just because it is the government.

People are taught that good citizens believe in and support their government. So government activities and policies convey a special sense of valuation and sanction that promotes and gives social approval to behaviors and beliefs that emulate those of the government. The government acts as a powerful model for broader society that influences and determines the behaviors of its citizens. It is believed to not only be okay but to be good to imitate and model individual and organizational behavior after the example set by the government. Ultimately, minority and female managers are impacted by the influence government activities have on their colleagues and organizations. The government model communicates appropriate beliefs and behaviors to be emulated by work-place colleagues toward blacks, other minorities, and women.

The climate in which managers work is a crucial determinant of cooperation, support, inclusion and ultimately career success. Warm, empathetic, environments are prerequisite for success. Hostile, indifferent, cold and exclusionary environments are predictive of failure. The developments among each of the individual government agencies and the cumulative pattern which follow have greatly contributed to many organizational climates for non traditional managers which have at a minimum made black managerial and executive careers less rewarding and in some instances no longer viable.

In order to understand the present situation in which black, other minority, and female managers find themselves, it is necessary to understand the evolution of government activities and the evolving interpretation of the law. The following admittedly abbreviated background is intended to facilitate understanding of the broader American social climate and more specifically the internal corporate climates and the individual, group, and organizational attitudes engendered toward equal opportunity activities and towards the in-place non traditional managers within corporations.

Justice Deparment: From Advocate To Adversary Of MINORITIES & WOMEN

A major shift in the Federal Governments enforcement posture from previous administrations was signalled when a benchmark of 20% minority employees negotiated under the Carter administration with federal agencies was eliminated in "fear that the benchmark would be viewed as a quota." Goals were seen as quotas and quotas were viewed as "unequal opportunity" rather than equal opportunity. This position was a signal of the initial impetus in a shift in role of the Federal Government from advocate to adversary of equal opportunity.

William Bradford Reynolds, the administration's Civil Rights Chief in the Department of Justice, expressed intentions of abandoning previous activities viewed as affirmative action requiring hiring and promotion activities that reflect the ethnic makeup of the labor force. He defined his policy as being directed at insuring "color blind" enforcement of the constitution and Title VII of the Civil Rights Act.

The enforcement agencies for equal employment faced two major issues:

1] Budget reductions and
2] Redefinitions of their missions.

The EEOC was a major target to reduce its previous activism because it was viewed as having contributed to a "new racism in America" by focusing on affirmative action quotas.

The Civil Rights commission also came under criticism. In November 1981, it was announced that the Chairman, Arthur Fleming was to be dismissed and replaced by Clarence Pendleton. On December 6th, 1981, the commission said it strongly supported affirmative action including the selective use of numerical goals and hiring quotas. The Civil Rights Commission pointed out that the new policy directions being mandated were inconsistent with the established principles of established civil rights law and policy. Murray Saltzman, a member of the Commission asserted that the new Federal Administration was abandoning the commitment that Congress, the courts, and previous

Presidents had made to eradicate discrimination in the work place and in schools. Mr Saltzman said "**I fear that the growing perception of a retreat on the federal level will encourage those who have traditionally been the spokesmen of bigotry and of violence.**"

On December 16, 1981, the EEOC criticized the Justice Departments Civil Rights Division's intentions of attempting to overturn court ordered preferential hiring, stating that affirmative action is an appropriate remedy in civil rights enforcement. The head of the Civil Rights Division said he hoped to get the Supreme Court to rule that preferential hiring and quotas are unconstitutional. Justice Department attorneys were being directed not to seek such preference in cases the justice department handles. The Justice Department pointed out that the acting director of the EEOC, J. Clay Smith, was a lame duck appointee whose term expired in July. "what are we going to do? Tell him to shut up? He'll call another press conference."

In the spring of 1983, The Justice Department joined suits as friends of the court in New Orleans and Boston in spite of protests from civil rights groups. In Boston the Department argued that court orders putting black policemen and firemen back to work discriminate based on race and disregard valid seniority systems. In New Orleans they extended this view to oppose preferential hiring and promotions of black police officers. They also argued that only actual victims of discrimination should be protected while civil rights lawyers argued that this approach did little for systems that excluded blacks previously. The NAACP Legal Defense Fund representing the black police officers complained that the Justice Department's stand dramatically changed the position the government had taken in the administration of the past four presidents. The EEOC and the Civil Rights Commission also opposed the Justice Department's position.

Equal Employment Opportunity Commission: The End Of Class Actions

In 1973, the Equal Employment Opportunity Commission set up a National Programs Division that was selecting four to six national corporations along with twenty to forty smaller regional companies that were, based upon the numbers of complaints, perceived to be among the worst job discriminators. In March 1972, the agency received statutory authority to file lawsuits and to go beyond mere investigations and attempts to conciliate. The EEOC Chairman, William Brown stated in July 1973, "The whole climate is different now, with our enforcement powers and because of the A.T.&T. settlement." He said A.T.&T. had a wide psychological impact. It is being taken seriously. Most people and their lawyers ask me now 'what can we do to avoid that kind of thing?' "Mr. Brown noted the nature of the complaints was changing. The complaints used to be concentrated on simple refusal to hire women or minorities for specific jobs," he said. "But now, more complaints are charging discriminatory promotion policies and discrimination in fringe benefits."

More recently the EEOC has been criticized that they have failed to use their statutory authority to bring suit. It has been pointed out that only 9 class action suits have been filed since 1972. However, on October 28th, 1983, Clarence Thomas, Chairman of the EEOC, stated that the enforcement emphasis of his organization would be shifting from voluntary and rapid complaint handling to an emphasis on more investigation and involvement by lawyers. More litigation, fewer assumptions that complaints would be settled, a reduced role of the EEOC as corporate claims adjusters and more expensive corporate settlements are the anticipated end results.

However, an increasingly resistant posture of business to equal opportunity was also having a cumulative impact on the EEOC. A newspaper interview with Clarence Thomas in June 1983 focused on the increased resentment and resistance being encountered. Thomas said "The opinion that the Reagin Administration will not enforce civil rights laws is so widespread that some employers are surprised they face penalties for job discrimination. He said he "had received reports about employers who thought the laws against job bias no longer applied. The difficulty was that some employers would not settle out close cases because of the perception." Mr. Thomas said, "But I have sworn to uphold the law." Thomas said that "many companies would not compromise on any EEO issue without insisting upon full lengthy and costly litigation and legal resolution."

Department Of Labor Office Of Federal Contract Compliance: No Policy

The Office Of Federal Contract Compliance announced on April 2, 1983, that it was going to relax requirements for federal contractors to recruit and promote protected classes. Under the new rules, the government would seek relief such as back pay only for identifiable victims of job discrimination rather than affected classes. The new rules say goals are targets, not rigid quotas. A contractor will not be found in violation solely because it fails to achieve its goals. The new rules also say a contractor may always select a more qualified person over a less qualified person.

On July 27th, 1984, The Bureau of National Affairs reported that the OFCCP had been a near total failure under the current administration. Critics of inadequate enforcement at the agency, including three recently retired officials, told the House Subcommittee on Employment Opportunities of these failures. The three former officials charged enforcement had decreased with more emphasis on raising the numbers and less on the quality of the work done. In June 1981, a former official charged, "an abrupt change in the administration of the contract compliance program began". All proposed enforcement actions were required to be forwarded to the national office for review as a result of which a monstrous paper jam virtually caused all enforcement to cease. At the end of this snafu, most of the files which were forwarded were closed administratively which resulted in no corrective action being taken. The more serious violations were "negotiated into oblivion."

Between July 1981 and July 1982, the agencies files that form the basis for conclusions reached on the compliance status of contractors were so barren of facts that they could neither confirm nor deny contractor compliance. "Statistics designed to impress budget allocators and public inquiries, are fraudulent and a cruel hoax for those seeking relief" from discrimination. James Cisco, former director, charged. The "lack of program enforcement" constituted a substantial reason for his retirement in May 1983. He also charged that policy development was directive rather than creative.

John Sauls, the third official criticized a reporting system that allowed a contractor to **"mask and camouflage practices at facilities". "None of the companies involved have minorities in top management positions" and "they have been difficult to review". The reports show only "what the contractor wants to show. And in essence, "legally provide" a contractor with a "mechanism to discriminate without detection."**

In 1982, the National Self Monitoring Reporting System was initiated with several large government contractors creating concerns about the validity of self-reporting by companies. The theoretical advantage in this system being that taxpayer money would be saved by having contractors report their equal opportunity compliance on an annual basis. This refined concept called the National Reporting System was expanded in 1986. Contractors received the additional safeguard of no expiration dates on their government agreements and the government was bound by only being able to terminate these agreements for "blatant disregard" of title VII. Contractors were also granted annual exit clauses and OFCCP reviews were limited to only one reporting establishment every three years within a company or its subsidiaries.

Finally, Joseph Cooper, one of the highest ranking black officials in the Reagan Administration, resigned in mid January 1987 after 17 months of heading up the Office of Federal Contract Compliance. He protested over what he termed "vocal dissenters" among his colleagues who not only give no more than "lip service" to affirmative action, he said but also "promote the idea that goals and timetables are quotas and that reverse discrimination is a reality." Coopers statements indicate serious disagreement on enforcement.

Civil Rights Commission: Abandoned Research & Adopted Ideology

The envisioned role of the United States Civil Rights Commission was to be an investigative body to find facts for the use of the President and Congress. The functions of the Commission were to satisfy the nations needs for professional knowledge and research in ending prejudice and discrimination, to act as a moral conscience, and to be a source of vision in guiding America closer to its stated ideals. The United States Civil Rights Commission was created as a bipartisan agency by an act of Congress in 1957 to study and collect information, investigate allegations of discrimination and evaluate government laws and policies. The end objective of these activities was for this agency to act as an informed resource and clearinghouse of knowledge and research to be used to eliminate discrimination.

The agency was originally staffed by prestigious commissioners and built a reputation for solid research and reasoned argument that was a major influence in the development of civil rights laws and policies. The exceptionally accomplished and prestigious members of the commission at the completion of the original five volume report in 1961 were John Hanna, Chairman, President of the Southwestern Legal Center; Rev. Theodore Hesburgh, President of Notre dame University; Robert Rankin, Chairman of the Department of Political science, Duke University, Spottswood Robinson, Dean of the Howard University School of Law; and Erwin Griswold, Dean of the Harvard Law School.

The Commissions initial recommendation after studying black employment was that "Congress grant authority to the Presidents Committee on Equal Employment opportunity or establish a similar agency to encourage and enforce a policy of equal employment opportunity in all federal employment, both civilian and military, and all employment created or supported by government contracts and federal funds."

In March, 1983, the U.S. Commission on Civil Rights protested that federal agencies were not cooperating by sharing information required to evaluate their civil rights progress. Clarence Pendelton, the new Chairman selected by President Reagin, who had worked with Ed Meese when he was in California before Mr. Meese headed the Justice Department, stated that his agency might have to resort to subpoenas in order to get the Labor and Education Department records after having attempted futilely for over a year to obtain the records. The records were finally delivered in April 1983 after the threat of subpoena.

At the first meeting in 1984, The Civil Rights Commission repudiated all of the work done by the previous commission as its first act. And in 1984, a new magazine, "New Perspectives" was inaugurated to replace the existing magazine titled "Civil Rights Perspectives". All articles that had been scheduled to be published were cancelled and new articles with more conservative tones were substituted.

More recently the Chairman of the Commission has proposed that by eliminating goals and quotas America would end discrimination and create a color blind society. In a February 12th, 1986 letter, Clarence M. Pendelton asked President Reagan "To put the lingering debate about goals and timetables behind us, and permit all Americans to live, work, and be educated in a color-blind society free of discrimination. Goals and timetables mean quotas or they mean nothing. Quotas are not remedies for discrimination, they are measures that create discrimination." (Civil Rights Update; U.S. Commission On Civil Rights, Spring 1986)

Policy directions of the commission have been refocused on rectifying single acts of discrimination and are opposed to such acts as busing to achieve school desegregation and hiring quotas.

An audit by the General Accounting office found numerous irregularities in personnel practices, travel records, and financial management since October 1982. The commission also displeased Congress when it closed 7 of 10 regional monitoring offices despite specific instructions from Congress that the offices were to remain. The agency had its budget cut by Congress from 11.6 million in 1985 to 7.5 million for 1986. The staff was cut from 200 to 90.

And at the end of 1986, the staff director, J. Al Latham Jr. resigned in part because the agency budget cut had crippled the agency. In November Commissioner John Bunzel, asked President Reagan not to reappoint him because the agency had lost its credibility and moral strength. "Gone are the moral strength and purpose it once enjoyed when times were simpler and its vision clearer," he wrote to President Reagin. "The best days of the commission are over."

The Revised Government Posture And its Devastating Impact

The unanimous acceptance of the new position on affirmative action and equal opportunity was achieved in 1985 with the announced concurrence of all federal agencies with the Justice Department positions. Business Week carried a story on March 11, 1985 titled "A New Drive To 'Reagonize' Equal opportunity. The new policy was that "equal employment opportunity laws require only color blind personnel policies and not preferential treatment of blacks, Hispanics, or females to account for societies historic bias." It was reported that "Federal agencies with EEO responsibilities are bringing their policies in line with the Reynolds approach. The Labor Dept. responsible for ... government contractors ... is revamping its rules to give less weight to raw numbers. The Office of Personnel Management is considering automatic approval ... of tests, even if they give an advantage to white males. The U.S. Commission on Civil Rights, ...resolved to reject as precedent all commission policies. One priority is to examine how groups such as Italian Americans have been hurt by hiring preferences imposed through affirmative action."

"But the most important changes are brewing at the Equal Opportunity Commission, cornerstone of the government's campaign against job bias. The EEOC is already concentrating on individual cases of alleged discrimination, rather than trying to identify company-wide or industry-wide patterns of bias. In addition, Chairman Clarence Thomas has instructed his staff to restudy the guidelines issued jointly in 1978 by all federal agencies that enforce EEO laws. He is calling for less rigid standards." This story reported that "the widespread activity worries companies that have learned to live with the present standards. Monsantos Equal Opportunity Director and head of the National Association Of Manufacturers Panel, William S. McEwen said "Let the government throw doubt on these standards... and employers are likely to take their chances in litigation." - an alternative they find "frighteningly expensive. 'Even more worrisome,' says a lawyer who represents corporations in EEO matters, is the possibility that the next administration might reject the easier positions being taken by the second Reagin term - 'and then business would be the scapegoat, facing back pay liability.'"

A Regression In American Culture: Wrong Beliefs And Old Attitudes

UCRA and CANI achieved their goals of protecting academic freedom and autonomy. But they also contributed to major changes in American attitudes and beliefs. The end result was a cooling of support and increased resentment for equal opportunity and affirmative action.

In 1978, the media use of the newly invented terminology that defined affirmative efforts to create a level playing field as "reverse discrimination" against "innocent white males" began to alter the beliefs of white Americans. These new beliefs led to a reduction in the empathetic support of many individuals and organizations for achieving equal opportunity. The impact on blacks was particularly accute.

Gallup and Harris polls in 1978 indicated that there was a growing feeling among whites that blacks had achieved enough. A Carnegie Corporation study showed that many whites believed that the nations debt to black people had been so fully paid that whites were becoming the victims of "reverse discrimination". And on June 28th, the University of California Regents v. Bakke decision was handed down by the Supreme Court reflecting the revised terminology created by U.C.R.A. and C.A.N.i and that had been only been implanted into the vocabulary and wording of the media hype surrounding this court decision, but also the language and discussion of the court decision itself, and perhaps most importantly into the beliefs and minds of many Americans. Such beliefs influence and determine not only individual behaviors, but also the broader social climate within the nation and within organizations themselves.

Arnold Foster, General Counsel for the Anti-Defamation League of B'nai B'rith said to the New York Times: "The League was comfortable that, once and for all, the United States Supreme court has held that racial quotas are flatly illegal. And Ron Robinson, Executive Director of Young Americans For Freedom, said the decision was "an important step in eliminating the practices of reverse discrimination and quotas." Simultaneously, Norm Dosen, Chairman of the American Civil Liberties Union warned that the ruling might "sap the will" of managers responsible for affirmative action in realizing equal opportunity.

A second factor, in addition to the impact on beliefs and a cooled off climate regarding support that now had to be considered by even the most sincere organization was legal liability for reverse discrimination as a result of having moved ahead too aggressively in supporting minorities or women. The role of some corporate equal opportunity staffs rather than being locating, hiring, developing, fully utilizing and assimilating nontraditional managers into corporate mainstreams by taking innovative actions, shifted toward assuring doing what was legally defensible from the corporate legal departments point of view. As the letter of EEO law assumed greater focus, the spirit of the law was reduced in priority. And the danger, as in a labor contract that is followed to the letter, and therefore results in a labor slowdown, eeo became more and more of a process at the expense of the concept and spirit required for ultimate success.

In 1980, a survey of over 1500 Americans[27] found that white Americans tend to perceive widespread reverse discrimination and to deny structural limits to black opportunities. Many whites appear to believe that great progress toward removing barriers to blacks opportunity has occurred in recent years and that blacks have better than average opportunity due to unfair preferential treatment accorded to blacks. There is a perception of widespread reverse discrimination, with **53% of whites believing blacks get preferential treatment.**

The study concluded that **73% of white Americans had unrealistic beliefs about black opportunities**. While there was near "unanimous agreement that blacks should have equal opportunity...such attitudes are necessary but not sufficient to motivate action towards ensuring equality. One must also believe that opportunity for blacks is structurally limited - that there is inequality of opportunity" "Media treatment of affirmative action, especially the case of Bakke v. California Board of Regents, suggests that there is no consensually held belief that blacks's opportunity currently is structurally limited."

There were other important findings and conclusions from additional analysis of this survey data published in an article titled "Beliefs and Attitudes about Women's Opportunity: Comparisons with Beliefs about Blacks and a General Perspective".[28]

> "We predicted that the public perception of structural limits to womens opportunity would exceed that for blacks, and the data support this hypothesis. Overall barriers to opportunity are more widely percieved for women than for blacks. Beliefs about specific groups' opportunity may reflect the personal opportunity experience of the perciever and "we speculate that negative racial affect is more widespread and influential than negative affect directed at women."

The Political Environment: Sanctions For Not Adhering To EEO Law

The social sanction of adhering to the law and the embarrasement and financial penalty of government enforcement has been largely lost. A senior executive explained the internal corporate influence this way. "You can certainly see the change in enforcement. We are now undergoing our first affirmative action audit since 1979. In other administrations there was a lot of concern about affirmative action audits, this would help keep the pressure on because generally they were coming in at least annually. In some instances, you had the impression that they were watching even more frequently than annually. But since 1979, there has not been any kind of pressure".

"As a corporate executive, I don't think we have cause to be concerned about the audit. Not because we have done so well but because the measurements and the evaluations will probably be looser than they have been in the past. Looser in the sense that the numbers will be interpreted differently. In the past, numbers were interpreted very rigidly but my impression is that the numbers will not be interpreted too rigidly. The impact this has had in this company is that qualitatively, the support systems are no longer there for minorities that move into management positions. And another impact is that in these days, there are very few minorities moving into management situations. In fact there are indications that there is an incresing trend for minorities to move out of this and other companies".

Another executive said: The way we used to get the field divisions to make progress in moving blacks ahead was to frighten and threaten them into action by telling them of an upcoming government audit. They would then get serious and the quick progress they made was amazing. But today, that doesn't work. Government reviews are so ineffective that there is no longera sense of concern for there is no longer a risk of punitive government action. The last time I advised the field divisions of an upcoming government review, they were indifferent and unconcerned because the previous audits just involved a review of the numerical process and had no impact on the field. So, now since the government is viewed as a paper tiger by the field, I have lost my leverage in getting them to make progress.

The Reduction In Corporate EEO Concerns & its Impact

A 1979 study of some 300 employer respondents cited bottom line impacting financial concerns as having the greatest influence in motivating management to pursue affirmative action programs.29

The greatest concern (25% of respondents) was being fined for past discrimination. The second and third greatest concerns (each with 22% of the respondents) was the prospect of losing government contracts or the prospect of adverse publicity.

A 1979 survey answered by 286 corporate executives found that 44% felt EEO was a declining issue of concern for top management and that 54% felt it was not a declining priority. But a June 1983 survey of 785 business leaders ranked "having an effective affirmative action program for minorities and women" almost last as 23rd out of 25 human resource priorities.

Cold And Indifferent Corporate Climates

Corporations react to their environments, respond to environmental pressures and the squeaking wheel gets the grease. Issues that are non issues lose their priority, lose the focus of senior managers, and increasingly they are ignored.

A May 17, 1982 front page Wall St. Journal Article noted how some companies were finding resistance to equal opportunity from their managers. The article noted that questions were coming from their managers who were asking "why are we doing this when the outside environment has cooled to these programs? Why are we wasting the money? A "Black manager at a major manufacturing company complained that you can say things now that just weren't in vogue five years ago; the roadblock people are coming out of the closet." This executive said that at a cocktail party during a regional sales meeting late this year (1981), an important official of the company said in a group conversation that "most of my people would find it extremely difficult, almost counterproductive to work for a minority individual." The black executive added with some bitterness, "He said it in front of me because he considers me a member of the team, whatever that means. But three years ago, nobody would have made a remark like that; nobody would have said it 10 years ago, either." The Journal went on to report: "In addition, there is some evidence of a relaxation of efforts to recruit minority group members and women. We get the sense that they (companies) aren't feeling the pressure anymore. The emphasis is on quality without a major consideration of minority status."

In some organizations, the welcome mat for qualified minorities that existed in the late 60's and early 70's is gone. A chillier, less receptive, more indifferent, less supportive and in some situations, a more hostile work environment is being reported by black managers. One black manager standing beside a bulletin board outside the cafeteria door told how one of a group of white male managers pointed to the standard notices posted on the bulletin board proclaiming the company was "An Equal Opportunity Employer." This white manager said "Why's that EEO garbage still posted, I thought we didn't have to worry about that nonsense since Reagin became President?

Similarly, in 1984, several hundred black M.B.A.s from across the nation discussing their corporate opportunities concluded that corporate concern with equal opportunity for black managers was a dead issue and part of the past.

Internally within companies, the pressures of stagnating college graduate black managers and white collar professionals was building. Dr. Kenneth Clark, Professor Emeritus of Psychology at City College Of New York, and a consultant to numerous corporations noted these pressures in an article for Bell Telephone Magazine. He wrote:

> "Under-employed graduates likely will become frustrated, often alienated. Minorities often lose the opportunity to show that they can perform in more demanding assignments. Individuals prevented from showing ability or competence and who must take on stereotyped or token assignments are more discontented than contented. They become self conscious, try to over conform or over produce, or seek the safety of "non visible" positions. Underemployment of the (highly) educated is both cause and effect of insecurity, stress, and alienation. It creates discontent and malaise. Employment situations not commensurate with an individuals educational skill and attainment, without hope for improvement appear ripe for collective organization into a strong political force."

Todays Convoluted Discussion

The impact and effectiveness of UCRA and CANI in redefining the tone, terms, meaning and nature of the current discussion are illustrated by an August 7th, 1986, Wall St. Journal editorial by William R. Beer, a sociology professor at Brooklyn College New York

> Just in time for last month's Liberty Weekend, the Supreme Court announced its decision that preferential treatment for blacks, other minorities and women was constitutional. We now know that

it is legal for white males to be subject to racial and sexual discrimination in favor of people who have never personally suffered from it in the past. The juridical arguments may be over for the moment. But what are the effects of reverse discrimination in the real world?

The Supreme Court's decision can only increase the resentment of a largely hostile public. A large majority of Americans are opposed to preferential treatment for women in hiring and admissions to professional schools.

One must wonder about the exotic logic of the Supreme Court. It endorses racial discrimination in favor of a group of people who mostly oppose preferential treatment for themselves, and a majority of whom say they have never suffered from hiring-related racial discrimination. One suspects the concern of affirmative action is not social reality but some abstract plan of the ideally just society. As with all Utopian schemes, reverse racial and sexual discrimination has strange effects when imposed on a mostly unwilling public.

Superior secondary education helps. It is a strong argument for improving the quality of secondary education in the U.S., but this aim will not be achieved by hiring and promoting people on the basis of color after they have finished the schooling.

One of the most frequent criticisms of preferential hiring is that privileges for a certain group have a way of becoming a permanent part of the political landscape. One of the ways in which this is accomplished is by subjecting anyone who questions the policy to public vilification. My own experience is a case in point. Last autumn I published an article that was critical of affirmative action. As a result, two black professors at Brooklyn College published personal attacks on me, accusing me of being a racist and calling for by dismissal from the faculty. I am protected by tenure, but one wonders how many others have shrunk from protesting such a sacred cow, out of fear of persecution by the lobby for reverse racism.

Some of the most vocal supporters of affirmative discrimination at Brooklyn College are among the female faculty. Part of this is due to feminist ideology, and part is simple self-interest: It is well known that white women have benefited enormously from affirmative action, and my college is no exception. When I first came to the Sociology department, there were three distinguished black professors and two lower level black faculty, none of whom had been appointed as a result of affirmative-action policy. The proportion of female faculty members was considerably less than half. Now, after two decades of affirmative action, my department is almost half female (10 out of 22 full-time professors), but there are no black professors at all. Who has won and who has lost? I cannot believe this outcome is consistent with the original intention of the Civil Rights act of 1964.

Most of what I have said about the effects of reverse discrimination is anecdotal. This is because, to date, there has been no large-scale and systematic study of its effects. Such a gap in our knowledge emphasizes that legal decisions about affirmative action have taken place in a vacuum of ignorance about their social consequences.

SECTION V

SLAVERY: THE WELLSPRING OF BLACK & WHITE CONFLICT IN AMERICA; AMERICAN CULTURE; AND THE ONGOING EXCERPTED "AMERICAN DILEMMA"

AN OVERVIEW OF HISTORIC AMERICAN RACE RELATIONS

In understanding any situation whether in the military, in business, in an investigative or legal review or in other situations involving choosing between alternatives, one of the the first requirements is a comprehensive understanding of the background leading up to the current situation. Such a perspective provides a sense of historic trends, repetitious issues, new and evolving developments, and situational contexts that influence outcomes and developments.

Equal opportunity is no different. In order to understand and to evaluate the relative progress between different groups of Americans, we must first understand their historic relationships and the symbolism, meanings, emotions, feelings, and beliefs surrounding the historic relationships between different groups.

The Meaning Of Culture

Every society has an integrated pattern of prevailing behaviors that govern relationships and that dictate the socially approved manner in which people in that society are expected to act toward various other people in that society. Culture consists of those habits in individuals that have become customary, conventionalized, and accepted in the community. Once habits have become conventionalized, sanctioned, and transmitted they become communal possessions because the community and the society conserve and transmit them by communicating habits of doing, thinking, and feeling from older people to younger people.

It is easy to observe how different individuals within the same society act similarly and rather uniformly toward other people in similar positions or social roles. For example, in most societies, people act differently toward young people than they do toward old people in the amount and manner of granting deference and respect. And men and women often act differently toward women than they do toward men in granting courtesies, in their manners, and in the roles or expected roles they assume relative to each other.

While the expected behaviors of each society are unique and frequently vary from society to society, these expected behaviors become habits, traditions, and the expected and the approved behavioral etiquette within each society. Over time, some forms of approved behavior and etiquette become so expected that they are compelling and those who do not act according to these expected behaviors are viewed as being deviants and they are at risk of social censure.

Some forms of behavior are considered so vital to the functioning of a society and so compelling that they are enacted into law. For example, driving on the right hand side of the road is a matter of law in America as is driving on the left hand side of the road a matter of law in England. Driving on either side of the road is functional, but the respective laws reflect the local social habits that became accepted custom and then for reasons of uniformity and safety, were enacted into law.

As time passes, The reasons a given society thinks, believes, behaves, or functions the way it does can become deeply obscured in history. And the original factors, forces, and logic that initiated and drove the behavior, while understandable if set in the situational context of their historic times, are often long forgotten because the habits and expectations of the people within a society are now the driving forces that perpetuate a societies norms. Thus it is that the bearers of a societies culture are the members of the society; for people express their cultural beliefs throughout their accustomed relations with one another and their personalities are patterned in their cultures, and in order to continue to receive social approval -- in order to fit into that culture -- they naturally tend to resist alteration and repatterning of the culture, and their behaviors. Resistance to changing behaviors is especially strong when behavior alteration inconveniences a particular person or group of people or results in a loss of current advantage or status.

Culture in isolation, without specific examination and awareness tends to change slowly, almost insensibly, because of a lack of forces to disturb the culture and also because of strong inbuilt inertial principles. Educators, media, books, schools and colleges, and every other element of a culture tends to perpetuate the in place beliefs, habits, norms, and etiquettes of the culture.

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How we behave, what we believe, our unique histories and other related factors that underlay what we believe and how we came to believe it, are major elements of a societies culture. Some of the most compelling and deeply held beliefs are those that are reflected in a societies laws. Many of the most important aspects of a societies culture exist in the minds of its people in the form of beliefs, ideologies and values. Over time the reasons we behave and believe the way we do may become obscured. Yet each generation of parents continues to teach a societies proper behaviors and beliefs to each succeeding generation of upcoming young future citizens by rewarding desirable behaviors, beliefs, and thoughts with praise from approving elders. Children in search of approval and acceptance emulate the behaviors and beliefs expected and praised by elders.

Culture defines the rules under which members of a society are developed and socialized from childhood through adulthood. And generation after generation, often without being aware, absorbs these rules like people absorb chemicals by breathing air or fish absorb chemicals from the water that envelopes them. Culture is like water to fish and air to people, it totally surrounds and influences everyone within a society, but is so taken for granted and unnoticed that people are often unaware of their societies unique cultural features that may be quite different from those in other societies. Each generation perpetuates these rules, generally, with very slow, if any, change. Culture is so powerful precisely because it is beneath our levels of conscious awareness. People just act naturally by doing things and holding beliefs and values because "it has always been that way" and they "never thought about it" or they feel "comfortable" that way.

Thus it is that habits, customs, expectations, behavioral norms, roles, ways of thinking and other features of a societies culture are unconsciously and unthinkingly passed on from generation to generation. Because culture is so all pervasive, and generally not recognized at a level of conscious awareness, it makes objective evaluation of ones own culture impossible because every person who is a member of that culture is immersed in that culture. And since culture consists of accepted habits, people only take notice of deviations from the expected. It is deviations that are seen to be offensive. Culture makes it possible for a society to act collectively over a wide area. By acting in approved manners, by acting similarly, people act in concert with each other.

A very strong indication that black managers are facing a common American cultural obstacle is the very strong and uniform groupings in the climate perceptions and the frequently observed common behaviors toward black managers by white managers and between black and white managers. But why do American whites and blacks act towards each other the way they do? In order to get a somewhat better understanding we must review the habits and customs that developed over time between these groups.

A Sketch Of Historic Relationships between Black and White Americans

The relationships between whites and blacks began in the English colonies that would eventually become America before the puritans landed at Plymouth with the initiation of black slavery in Jamestown Virginia in 1619. Slavery was not part of some grand plan. In America, we adhoced our way into it step by step without any view of the outcome and future consequences. It serves little purpose for the task at hand, i.e. understanding current relationships and present realities in order to focus on policy needs, to venture back into history with the objectives of retrospective judgemental evaluations. However, without some sense of the realities of these historic realities, no matter how unpleasant, we cannot understand todays relationships and realities.

Those who earnestly want to understand current black white relations in America in order to focus on policy, must first understand that slavery and black skin color came to consciously or unconsciously symbolize everything that was the antithesis of success in America. Black skin color symbolized everthing that noone -- including blacks -- wanted to be. In the minds of the American colonists, and for generation after generation -- right into the present -- our American culture has passed on many of the residual beliefs, attitudes, emotions and feelings that were part of the fallout from behaviors and relationships that developed during and as a result of slavery.

Slavery began with a desire to survive, to prosper, and to make money in the new English colonies. The imperative and impelling need for labor in the American colonies was primary. labor was required to clear lands, drain swamps, cut forests, plant and harvest food and other crops and to otherwise build the capital base of colonial Americas economy and infrastructure. Slavery began because of the need for labor. Over time, economic self interests, physical, religious and other cultural differences reinforced each other and evolved into American slavery based on black skin color.

Initially, blacks laborers, other than being exported from Africa and imported into America against their will were not treated dramatically different than the English treated their indentured servants, which was often quite harsh by current standards. However, the dramatic differences in African cultures and the English became symbolized in the polar differences between the African and English skin colors.

White slaves could easily blend into the population and slip away making slaves with white skin particularly burdensome to maintain. Slavery based upon skin color began an element of law in Virginia and in Maryland before 1680. Skin color ranging from brown to almost black, different physical features of hair, nose and lips, exclusive relegation of almost all blacks and relatively few whites to the lowest possible and the most demeaning social status of slavery, and then the enactment into law of those behaviors that had become tradition and habit with the unique feature that in American law, slavery was for perpetuity and therefore unlike any other form of servitude. Slavery for perpetuity in America became uniquely associated with black skin and color.

Colonists came to america to prosper, to achieve, to succeed, and to obtain religious and political freedoms. Black skin color came to symbolize religious heathens, the lowest possible social class of laborers and to symbolize everything but success and freedom. Consequently, everyone coming to America wanted to be anything but a slave, and black skin color and people with black skin color came to symbolize slavery. So a person with black skin color came to represent everything negative, aversive and to be better than. Noone wanted to be a slave. Even blacks did want to be slaves. But in America, aversion to being a slave and aversion to being black became symbolically and psychologically synonymous.

And while slavery only became the dominant economic system in the Souther States, slavery existed in every american colony until after the American revolution. And even in those colonies in which slavery was not a major factor in the labor system, slavery and the slave trade supported related industries such as finance, shipping, shipbuilding, ship outfitting, insurance, rum distilling, and the manufacturing of iron, copper, and barrels. Slavery and the slave trade were foundational to the capital accumulation of America and other western slave trading nations such as Britain, France, Spain, Portugal, Holland, and Italy.

We should also remember that the sailing crews that manned the slaving ships sailing from the primary slaving ports in Massachusetts, New York, and Connecticut often developed callous, indifferent and hardened attitudes toward blacks in general as a result of the roles and relationships associated with transporting slaves from Africa, the West Indies, or the American colonies. Historic records indicate that slave ships were floating brothels with slave women left on deck to serve the sexual whims and pleasures of the slaving captains and crews. Many black women landed in America already impregnated with the children of white fathers. Black women were available even if unwilling sexual objects to their enslavers either after being captured in Africa and awaiting a ship for transit or while in transit on the decks of a slave ship. The callous and hardened relationships between slaves, enslavers, and slave crews had to contribute to hatred and resentment for these relationships were certainly not conducive to building positive perceptions and respect between white Americans and black slaves.

Slavery was harsh and it was not a system that would elicit voluntary compliance, so the only possible way to maintain the system of slavery was through the use of overwhelming force and power. It became accepted, then expected -- and later even required by law -- that every free white person use any physical means necessary including fear, intimidation, beating, mutilation and murder to maintain the slave system of white dominance and to supress all revolt from black slaves. Under such a system, hatred is bred within the victims toward their oppressors. And fear, distrust, contempt, disgust and constant vigilance becomes the habit of the whites who through force and power maintain the slavery system.

Black And White Relations In America In 1831

Alexis Detocqueville was born in france in 1805. In 1831 he visited America to examine the nature of American society and culture with an eye to discovering guiding principles that assured success in a democracy. Upon his return to Europe he wrote Democracy In America in 1835. As a Frenchman who did not grow up in America and who did not grow up in a society constituted of black slaves, he was not conditioned by slavery and could recognize its peculiar and unique characteristics. In 1835 he wrote:

> **There is a natural prejudice that prompts men to despise whoever has been their inferior long after he has become their equal; and the real inequality produced by fortune or law is always succeeded by an imaginary inequality implanted in the manners of the people.**
>
> **The greatest difficulty in (ancient Greece & Rome) was altering the law; among the (Americans), it is altering the customs and**

> **the real obstacles begin where those of (Greece & Rome) left off. This arises from the circumstances that among the Americans, the abstract and transient fact of slavery is fatally united with the physical and permanent fact of color. Thus the negro transmits the eternal mark of his ignominy to all his descendants and although the law may abolish slavery, God alone can obliterate the traces of its existence. The Americans, after they have abolished slavery, have there prejudices to contend against, the prejudice of the master, the prejudice of the white race, and the prejudice of color.**

The Excerpted American Dilemma

The perceptions and beliefs of the 18th century were a long time ago so one of the first questions that comes to mind is what relevance these historic comments and observations could possibly have for modern times? To answer this question let's review some 20th century observations.

In order to attempt an objective evaluation of Americas culture, and more specifically, to evaluate the situation of blacks within American culture, Gunnar Myrdal, a Swedish social scientist was engaged by the Carnegie Corporation. In 1944, he completed his voluminous 1483 page classic report titled "THE AMERICAN DILEMMA" that was requested in 1937. This report is still the most thorough sociological evaluation ever done about America. Myrdal focused upon Americas creed of liberty, opportunity, justice and democracy, which because it was so pervasively denied to blacks, created ongoing social tensions, interracial conflict and a major contradiction between American realities and ideologies.

The ensuing material consists of Myrdals original words that are excerpted to provide a snapshot and flavor without overburdening the reader with how Myrdal evaluated black white relations in America. These words and thoughts have been edited for brevity while striving to maintain the original contextual meaning.

Myrdal wrote:

> Our problem is the moral dilemma of the American - the conflict between his moral valuations on various levels of consciousness and generality. The American dilemma is the ever raging conflict between, on the other hand, the valuations preserved on the general plane which we shall call the "American Creed", where the American thinks, talks, and acts under the influence of high na-

tional and Christian precepts, and, on the other hand, the valuations on specific planes of individual and group living, where personal and local interests; economic, social, and sexual jealousies; considerations of community prestige and conformity; group prejudice against particular persons or types of people; and all sorts of miscellaneous wants, impulses, and habits dominate his out look.

The Negro was brought to America for the sake of the white mans profit. He was kept in slavery for generations in the same interest. The Negroes "place" in America has been precarious, uncertain and changing; he was no longer so necessary and profitable to the white man as in slavery before the Civil Was. In the main, the conflicting and vacillating valuations of the white majority have been decisive. The Negro has had little other strategy open to him than to play on the conflicting values in the white majority group. This is the situation today and will remain son in the foreseeable future. In this sense, "this is a white mans country". The Negro problem is predominantly a white mans problem. The Negro problem exists and changes because of conditions and forces operating in the larger American society. The entire structure of America is greatly conditioned by the presence of the thirteen million Negro citizens.

The Negro leader the Negro social scientist, the Negro man of art and letters is disposed to view all social, economic, political, indeed, even esthetic and philosophical issues from the Negro angle. What is more, he is expected to do so. He would seem entirely out of place if he spoke simply as a member of a community, a citizen of America or as a man of the world. In the existing American civilization he can grow to a degree of distinction, but always as a representative of "his people", not as an ordinary American or an individual in humanity. This is the social role awarded him, and he cannot step out of it. He is defined as a "race man" regardless of the role he might wish to choose for himself.

Even if originally he should have had the interests and the aptitudes for wider knowledge and a broader career, the pressure of this expectancy on the part of society conditions his personality and forces him, will-nilly, into the role of a Negro champion. This expectancy is entrenched in all institutions in American society, including universities, learned societies and foundations. Even women in modern times do not have their souls so pressed into one single narrow furrow of human interests by the tyrannic expectancy of society, although the womans lot in this, as in many other respects, offers the nearest analogy. The Negro genius is imprisoned in the Negro problem. There is throughout the entire history of the United States no single example of an exception to this rule important enough to be cited.

The difference in this respect between the Negro and other "racial" minorities - the Jews for example - is notable. The difference is not explainable simply in terms of differences in natural and cultural abilities between the two groups. A Jewish economist is not expected to be a specialist on Jewish labor. A Jewish sociologist is not assumed to confine himself always to studying the Ghetto. A Jewish singer is not doomed eternally to perform Jewish folk songs. A Jew is not out of place either as a governor of a state or as a planner of world reconstruction. The Jew is discriminated against in America, but there is a quantitative difference between this and the discrimination against the Negro which is so great that it becomes qualitative.

To the white Americans the possibility of keeping the Negro problem out of their minds are, naturally, greater and they have selfish reasons for keeping it below the level of consciousness. It was not an unusual experience of the writer to be told confidently there is "no Negro problem" in America and that if there ever was one, it is solved and settled for all time to the full satisfaction of both parties. Such statements cover a volcanic ground of doubt, disagreement, concern, and even anxiety - of moral tension and a need for escape and defense. To furnish such a covering is from a psychological point of view, their very function. The prevalence of such opinions and the intensity with which they are expressed serve as an index of the latent interracial tension felt in the white world.

The usefulness of this escape rationalization has a limit that is reached when overt interracial struggles appear. The notion of "no Negro problem" is then suddenly transformed into an alarming awareness that the contrary is so. "There is no Negro problem" is in the white world a defense against ones own thoughts and feelings and the opinions of other whites. It often happened that the writer was told by Negroes that race relations were not much of a problem. White people present at such pronouncements took great pleasure in the corroboration of their own statements. It would seem that such statements from Negro leaders are part of the moral tribute expected from these leaders at all public interracial affairs.

Statements that interracial relations are good belong in the etiquette of Negro college presidents, principals and teachers and all other Negroes occupying middle class status under the sanction of the power of appointment and dismissal in the hands of white board officials. These sentiments are sometimes also expressed by Negro professionals aware of the requirements for successful leadership. The writer repeatedly made the observation that a Negro seldom took this position when there was no point in hiding his real feelings.

Considerations of personal advancement will sometimes make Negro advisors in government agencies and Negro aspirants for such jobs more interested in calming down the Negro protest than in giving it force and expression. On the national scene - and also in the larger cities - one often observes a phenomenon which has an exact parallel in the womens world, namely, that it s felt appropriate to have "one Negro" on boards, on committees, on petitions, and so on. Not infrequently, Negroes are shoved into positions of leadership by white leaders for purely strategic reasons. It is common practice in numerous organizations and movements today, especially those of the liberal variety, to say "we must have a Negro on this". This attitude has even found reflection in the purely academic and scholarly organizations where it has been deemed necessary to project a Negro now and then into some position of prominence in order to demonstrate the liberality and tolerance of the group.

A Negro must never contradict a white man nor mention a delicate subject directly. The tone of the conversation still remains fixed to a certain extent: the Negro is to use deferential tones and works; the white man is to use condescending tones and words. If the white man becomes angry or violent is his speech, the Negro cannot reciprocate. The apparent purpose of this etiquette of conversation is to provide a continual demonstration that the Negro is inferior to the white man and "recognizes" his inferiority. This serves not only to flatter the ego of the white man, but also to keep the Negro from real participation in the white mans social life.

The Negroes are commonly assumed to be unassimilable and this is the reason why the characterization of the Negro problem as a minority problem does not exhaust its true import. The Negroes are set apart, together with other colored peoples, principally the Chinese and the Japanese. Considerable efforts are directed toward "Americanizing" all groups of alien origin. In regard to the colored peoples, the American policy is the reverse. They are excluded from assimilation.

Among the groups considered unassimilable, the Negro group is by far the largest. The Negroes do not, like the Japanese and Chinese, have a politically organized nation and an accepted culture of their own outside of America to fall back upon. Unlike the Oriental there attaches to the Negro an historical memory of slavery and inferiority. It is more difficult for them to answer prejudice with prejudice and, as the Orientals may do, to consider themselves and their history superior to the whit Americans and their recent cultural achievements. The Negroes do not have these fortifications for self respect. They are more helplessly imprisoned as a subordinate caste in America, a caste of people deemed to be lacking a cultural past and assumed to be incapable of cultural future.

American attitudes define the Negro group in contradistinction to all the non-colored minority groups in America and all other lower class groups. The boundary between Negro and white is not simply a class line which can be successfully crossed by education, integration into the national culture, and individual economic advancement. The boundary is fixed. It is a bar erected with the intention of permanency. It is directed against the whole group.

It is the custom to permit whites to resort to violence and threats of violence against the life, personal security, property and freedom of movement of Negroes. There is a wide rang of behavior which the white man may excercise to control Negroes. While the practice has its origin in the slavery tradition, it continues to flourish because of the laxity and inequity of the administration of law and justice. **It would not be possible except for the deficient operation of the judicial sanctions. Both the practice of intimidation and violence and the inadequate functioning of justice are expressions of the same spirit of relative lawlessness; both are tolerated and upheld by the same public opinion.**

Any white man can abuse a Negro without fear of legal reprisal. The general attitude is one of laissez faire: if a white plantation owner cheats or beats his Negro tenants: "that's his business"; if a Negro is the victim, "he must have done something to deserve it". Above all, the Negro must be kept in his "place".

There is little that Negroes can do to protect themselves. Lynching is often the form of retaliation against Negroes who have struck back when they were struck or cheated first by whites. In principle, a lynching is not merely a punishment against an individual but a disciplinary device against the Negro group. Lynching is a local community affair. Women and children are not absent from lynching mobs; indeed, women sometimes incite the mobs into action. The lynchers are seldom indicted or punished. The powers that exist are often in sympathy with the lynchers or don't want to press the case.

Increased mobility and competition from Negroes correlates with increased lynchings. Economic fear is mixed with social fear: a feeling that the Negro is "getting out of his place", and the white mans social status is being threatened and is in need of defense. Lynching is more an expression of fear than of an offense committed. "There are indications of being afraid of the Negro. Not physical fear. It is not a matter of cowardice or bravery; it is something deeper and more fundamental. It is a fear of losing grip upon the world. **It is an unconscious fear of changing status".**

The treatment of the Negro in America's greatest and most conspicuous scandal. It is tremendously publicized, and democratic America will continue to publicize it itself. For the colored people all over the world, whose rising influence is axiomatic, this scandal is salt in their wounds. In all white nations which, because of the accident of ethnic homogeneity or for other causes, have not been inculcated with race prejudice, the color of the victim does not provide any excuse for white solidarity. That this is so in Russia is well known and advertised. It hold true also in many other white nations.

The bright side is that the conquering of color cast in America is America's own innermost desire. This baton early laid down as the moral basis for its existence the principles of equality and liberty. However much Americans have dodged this conviction, they have refused to adjust their laws to their own license. They refuse to discuss systematizing their caste system, apparently because they seriously mean that caste is wrong and should not be given recognition. They stand warmheartedly against oppression in all the world. When thy are reluctantly forced into war, they are compelled to justify their participation to their own conscience by insisting that they are fighting against aggression and for liberty and equality.

America feels itself to be humanity in miniature. When in this crucial time the international leadership passes to America, the great reason for hope is that this country has a national experience of uniting racial and cultural diversities and a nation theory, if not a consistent practice, of freedom and equality for all. What America is constantly reaching for is democracy at home and abroad. The main trend in its history is the gradual realization of the American Creed.

In this sense **the Negro problem is not only America's greatest failure but also America's incomparably great opportunity for the future. If America should follow its own deepest convictions, its well - being at home would be increased directly. At the same time America's prestige and power abroad would rise immensely. The century old dream of American patriots, that America should give to the entire world its own freedoms and its own faith, would come true. All dependent upon whether America can demonstrate that justice, equality and cooperation are possible between white and colored people.**This is what the world needs to believe. Mankind is sick of fear and disbelief, of pessimism and cynicism. It needs the youthful moralistic optimism of America. But empty declarations only deepen cynicism. Deeds are called for.

If America in actual practice could show the world a progressive trend by which the Negro became finally integrated into modern democracy, all mankind would be give faith again - it would have reason to believe that peace, progress and order are feasible. And America would have a spiritual power many times stronger than all her financial and military resources - the power of the trust and support of all good people on earth.**America is free to choose whether the Negro shall remain her liability or become her opportunity. The development of the American Negro problem during the years to come is, therefore, fateful not only for America itself but for all mankind.**

The Dilemma Comes To A Head: The Motivation For The Civil Rights Act

In the main, the problems Myrdal identified in 1944 had been largely ignored into the 60's. Marches, sit-ins, freedom rides, and riots between blacks and whites became an increasingly frequent reality. The responses of firehoses, tear gas, bombings, and police dogs became daily media events. Federal Marshalls, Army and National Guard troops, were called in to carry out school desegregation orders and the result in Mississippi was almost a state of war involving over 10,000 troops.

President Kennedy called for legislation and told America that it "faced nothing less than a moral crisis, both as a country and as a people. 'It cannot,' said President Kennedy, 'be met by repressive police action. It cannot be left to increased demonstrations in the streets. It cannot be quieted by token moves or talk. It is time to act in the Congress, in your state and local legislative body, and, above all, in all of our daily lives.'"

Seven hours later, Medgar Evars, was shot and killed in Jackson Mississippi, and "the summer of discontent began with demonstrations erupting all over the nation. North and South, New York and Chicago saw 1,412 demonstrations by the U.S. Justice Department count. "Newspaper pictures showing the limp bodies of Negroes being carried to police patrol wagons became a great tapestry of the times. Over the land echoed the Negro hymn 'We Shall Overcome.' Now the revolution was indeed in full stride, and it rushed pell-mell to grand climax of that summer: the 210, 000 strong march on Washington of August 28, 1963."[30]

In 1964, America was a society in turmoil and conflict between black and white citizens. The historic legacy of exclusion of black Americans, exclusion that was rooted in slavery, had come to a head-on confrontation. Black Americans previously coerced acceptance of second class citizenship came to a highly visibly and abrupt halt as blacks stood up despite threats, coercion, intimidation, and violence. Exclusion, a lack of opportunity, poverty, double standards, protests, conflict, social turmoil, national and International embarrassment began to boil over as Americas' social schism was made visibly obvious to everyone by the media. Denial was no longer possible as television exposed Americas' inconsistent black and white citizenship rights and privileges for the entire world to see.

Twenty years earlier, Myrdahl assessed the "Negro problem" as Americas greatest problem but also Americas greatest opportunity as he wrote: "If America should follow its own deepest convictions, its well-being at home would be increased directly. at the same time America's social prestige and power abroad would rise immensely. The century-old dream of American patriots, that America should give to the entire world its own freedoms and its own faith, would come true." In 1963, Martin Luther King shared his dream of brotherhood with his audience.

The impetus for civil rights legislation in 1964, was to cleanse and heal our national wounds of racial division and double standards and to calm Americas' on-going social turmoil that was focused upon the disparate citizenship being experienced by white and black Americans. With international embarrassment and a world of 80% people of color watching, America set out on a national course of action to close our national social wounds and to eliminate the social fissue that our nation had experienced because of race and color since our founding of slavery as a colony in 1619.

White & Black Attitudes & Perceptions

In 1963, after almost 350 hundreds of years of social behaviors, laws, habits,traditions and racial etiquettes based on black inferiority and subordinancy in conjunction with white supremacy; white attitudes about blacks were not only deep, but they were often psychologically and emotionally based.

A 1963 report by Lois Harris said: "The Negro's attitude toward the white man is fundamentally simple, it is based on the desire for equality. But when the white man in America looks at the Negro he is torn by a conflict between his emotions and his intellect. His intellect tells him that the Negro has indeed suffered years of discrimination, directly contradicting the American creed of equality for all. But his emotions make him feel uneasy at the prospect of such equality for the negro."[31]

In a Newsweek poll, a survey of whites confirmed the negative feelings of whites about blacks and "the violent emotionalism of many comments was striking." Comments such as "They stink"; they are dirty old things"; "I don't mind them unless they are very dark or if they're very odorous"; "I don't like to have to touch them. It makes me squeamish." Fear was apparent. "You don't know what they're going to do. They carry razors, knives, rape women. You can't trust them. They want to overrun whites and tell them what to do. The nerve they have to buck whites."

The conclusion drawn from the survey was that **this "wall of white emotion is the real enemy of the Negro".**

But the study also noted that a deep and abiding sense of law and order came through powerfully in comments like: "It's a matter of upholding the law. It's a matter of principle. Sending troops (to Little Rock) was the law. If one state gets by the law without obeying, why should I pay an income tax? Why should I obey the law? This situation has to be cleared up and if we can't do it through our government, how can we do it? If you leave it to the local government to start, it won't get done."

By better than 3 to 2 white people feel Negroes do not have job opportunities equal to whites. "Equal employment, which is ...the number one priority for Negroes, seems ripe for a breakthrough. Nearly nine out of every ten whites - including eight out of every ten Southerners - feel that Negroes have the right to equal jobs. What is more, a majority all over the country do not fear that Negroes will take their jobs away. Significantly, a solid majority (62%) of whites favor a Federal law enforcing and end to discrimination on the job.32

The Symbolic And Practical Impact Of Law & Government Enforcement

In 1906, Charles Sumner, Professor of political and social science at Yale published Folkways, a book which argued that laws cannot change a societies mores. He believed that the future of blacks in America would be determined solely by the whites among whom he lived and that outside attempts to change this condition were useless. The habits of action and feeling between blacks and whites would have to be left to develop and grow upon the residue of slavery. But the 50s and 60s demonstrated that vigorously enforced laws were effective. a

Most people have a desire to be good citizens who abide by the law and support the American Government. Laws can be an effective means of regulating behavior by setting socially appropriate standards of behavior and by creating behavioral habits of conforming to the law. And while there are many violations of laws, the majority of people attempt to comply with their understanding of the law. Law also educates and well publicized equal opportunity lawsuits broadly communicate information about the nature and extent of equal employment rights. And law, working in conjunction with other social forces, including prestigious leadership, enforcement procedures, and measures of progress.

The involvement of the United States Government is also of great assistance to plaintiffs in discrimination cases. The government has large legal staffs, abundant resources, and perhaps most importantly, by taking a position, a powerful symbolic message is communicated that the nation supports the action and resistance to compliance with the law may not be rewarding.

An important question is: "In race relations what difference does law make for those who do not concur with the law?" We must distinguish between laws effect on actual conduct and its impact on prejudice, an emotionally, psychologically, or socially and culturally based phenomena involving attitudes, beliefs, and feelings. Greenberg notes that "the effects of law on conduct and on prejudice are not wholly seperable. People often tend to agree with the law, or at least to abide by it, and the habits law induces may in various ways dissipate biased attitudes. conversely, violent prejudice may in some places actually avert social change if the public means of enforcement are insufficient; and if change does occur, deep antipathy obviously can affect its course or success".33

Greenberg concludes that the least effective law is that which has the least threat of immediate enforcement and the posture, roles, and positions taken by those in positions of leadership and authority greatly influence and can even determine the effectiveness of race relations laws.

Law not only affects conduct, it also effects the attitudes underlying and determining conduct. Gordon Allport, the recognized expert on the psychology of prejudice explains that improved conditions which come from lessened discrimination help create equal status minority and majority contacts. Such equal status contacts permit greater familiarization, closeness, and improved communication. Studies show that knowledge and familiarity decrease prejudice and that outward nondiscriminatory behavior, compelled by law and by organizational standards and rules "has an eventual effect upon inner habits of thought and feeling." Allport notes that apart from the change in attitude caused by changes in situation, "Laws in line with one's conscience are likely to be obeyed; when not obeyed they still establish an ethical norm that holds before the individual an image of what his conduct should be."34

Enforcement, particularly a well-publicized lawsuit, at the very least makes the existence of such norms known.

But government officials can be deterred from enforcing the law through fear of political reprisals and group ostracism. And most important, Greenberg concludes that "no appreciable gains have been achieved in bettering race relations" by conciliation efforts that do not have ultimate enforcement power and the most important factor of all is cited as the actual vigor of enforcement of the law. "A
number of leading authorities agree that a clear and unequivocal statement of policy, firm enforcement, willingness to deal with violators by employing appropriate sanctions, refusal to compromise principle, and an appeal to the community on a moral and

> religious level help to smooth a changeover in racial patterns".35 Vigorous enforcement has both an educational effect and helps to dissolve apathy.

One criteria for progress is the extent of authority in an organization. The more absolute the authority, the less successful were the chances of challenging moves toward integration and equality. The armed forces, where authority is more absolute are cited as examples of success, in spite of some grudging compliance because of the more absolute authority.

After President Kennedys' assassination, President Johnson used his formidable Congressional leverage to pass this bill as a memorial to Kennedy. However, in legislative efforts to block passage of resulted in an expansion of this primary objective. The legislative record shows that the pending legislation that became the Civil rights Act of 1964 had a clause added supporting the banning of sexism at the recommendation of Senator Howard Smith of Virginnia. His intention was "to sink the bill under gales of laughter". From his perspective, treating black Americans equally with white Americans was absurd. Granting women, even white women the right of employment equal to white males would assure the legislation would not pass.

White women had not suffered from the all consuming prejudice and social discrimination that blacks experienced, but their individuality and freedom to achieve was imprisoned within the accepted and expected custom of mens' and womens'gender roles which were deeply entrenched in the work place. These customs based on gender expectations put individual women, and women as a group, in a position of disadvantage. Individuality was economically imprisoned by being tied to achievement relative to men and thereby being subordinated regardless of womens individual abilities or aspirations.

Senator Margaret chase Smith of Maine supported the banning of racism in addition to sexism and astutely turned the tables on the Virginnia Senator. The legislation passed, and women, constituting over 50% of the American population, a formidable political force, had a self interest in equal opportunity.

Title VII Equal Employment Opportunity Background And Purpose

General

"The purpose of this title is to eliminate, through the utilization of formal and informal remedial procedures, discrimination in employment based on race, color, religion, or national origin and sets forth a congressional declaration that all persons within the jurisdiction of the United States have a right to the opportunity for employment without discrimination on account of race, color, or religion, or national origin. It is declared to be the national policy to protect the right of persons to be free from such discrimination."

Additional Majority Views of Hon. Robert W. Kastenmeier

"The undersigned would support legislation... in the execution of contracts let by the Federal Government. The undersigned believes there are valid reasons for having this function of nondiscrimination in Federal employment and contracts established on a statutory foundation and thus not subject to revocation or modification at the whim of succeeding Executives. Any doubt about the validity of promulgating such far-reaching national policy by Presidential action not founded upon any statutory grant of authority would be removed.... It would appear that the prevention of discrimination with respect to Federal Government contractors could appropriately be achieved by requiring them to enter into an enforceable undertaking and relying upon the body of law providing remedies for the violation of contracts for enforcement."

"The undersigned had contemplated offering an amendment as a substitute for title VII, embodying these principles, but time ... precluded completion of the study required to fashion appropriate legislation to this end.

CIVIL RIGHTS ACT OF 1964

"An act to enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United states to provide injunctive relief against discrimination in public accommodations, to authorize the Attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes."

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, that:

This Act may be cited as the "Civil Rights Act of 1964".

Sec. 703. (a) It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or priveleges og employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(j) Nothing contained in this title shall be interpreted to require any employer, ...to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, or religion, sex or national origin employed by any employer... in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in .. the available work force... .

SECTION VI

POLICY CONSIDERATIONS AND RECOMMENDATIONS

Equal employment opportunity policy is a critically important social issue in America. This is a very complex multidisciplinary set of issues that require the best possible research, the most objective evaluations of issues, the most effective leadership possible, and comprehensive communications of the current status and obstacles. yet, ideology is being substituted for these critical needs. rather than seeking out what we need to know and managing accordingly, we appear to be seeking out what we want to hear and guiding our policies with too much opinion and too little objective research based fact. All Americans must recognize that we have a nation to continue to build ant to get on with that process. All branches of government should take leadership roles, but leadership is abdicated by one branch, the void must be filled by the remaining branches of government.

It is time to either fish or cut bait if we are going to be serious about equal opportunity in America. We are turning some of our best nontraditional managers into psychological cannon fodder as they attempt to accede or to just hold on in some increasingly indifferent or even hostile environments. If we are to get serious about equal opportunity in America, we must carefully weigh the messages we send to individuals and to companies. We must send the message that equal opportunity is the right thing to do. Currently, government reviews have lost their corrective influence on companies and lax enforcement compounded by budget cuts has amounted to a defacto repeal of equal opportunity law. Even the roles of some corporate EEO departments are to ensure their companies are not sued or to minimize legal exposure and risk rather than to make progress in achieving equal opportunity.

The myth is widespread that any individual of ability, motivation and preparation can and will succeed. However the reality is that group dynamics are key determinants of success in situations based upon "relationships" such as is in middle to higher level managerial and professional careers. If members of any group are excluded from success in such positions, we tend to reinforce and perpetuate existing stereotypes and expectations of who is or is not an appropriate incumbent for a particular position.

Passage of a law is one thing but effective enforcement of the letter and the spirit of the law along with a continued commitment to achieve the original desired ends of the law are even more important. It is not only what we say but what we do that communicates the most important standards of social behavior and social policies. Bur at present, the government, as a result of inadequate enforcement policies, is communicating the wrong message to American society. It is increasingly becoming okay to discriminate. This situation is exacerbated by inadequate measures of progress by which to track trends and progress. And because of an inadequate measurement and control system, we are not measuring important items which supports a conspiracy of silence, as some of the best nontraditional managers encounter such hostile work environments that they are being coerced, forced, or reorganized out of many companies. Yet, since only the percentage of non-traditional managers is measured, more senior managers can easily be replaced by new managers at lower levels without changing the percentage representations.

All indicators point to a serious regression in progress and in opportunity for black, other minority, and female managers. There appears to be a continuum of difficulty with black managers encountering the greatest resistance, followed by other colored minorities, and women. This continuum of difficulty tracks with a continuum of color; black, brown, and yellow followed by white women. There is every indication that negative aspects of our history with black and other colored minorities, will preempt and define our future. A future that will not be one of true equal opportunity unless major changes are made in current policies.

The point of view that black college graduates are an elite and are therefore not in need of assistance is quite prevalent. however, I would argue that there are similarities in the obstacles being encountered by blacks in corporations that were ingredients that caused many of the black underclass trapped in poverty to give up and to even stop trying. Even pigeons stop pecking buttons if they do not receive any rewards. If the best prepared and most ambitious black, other minority, and female managers are not allowed to receive rewards relative to similarly contributing traditional managers. we are building in problems and pressures. The situation of black male managers seems to be particularly acute.

If black males, no matter how positive their personal characteristics, cannot succeed in corporations, we are sending a frightening message to the young black males trapped in the growing underclass of blacks. We cannot motivate them to self help, if those who were already motivated and well qualified cannot succeed. If black males cannot succeed the implications for poor black urban youth, for stable black families, for urban crime, for the drug problem, and for social tranquility in America are ominous.

Large companies set the legal and moral direction and tone for many smaller companies because some small companies emulate large companies. Therefore, what we do relative to large companies transmits a very strong signal to all other companies of the acceptable standards and future directions. currently, there is a need for more progress and less process in equal opportunity because neither minorities, women, or companies benefit from meaningless numbers and expense laden reports. But to decrease reporting requirements sends a strong signal that will lead to other companies copying behavior. Therefore we must assure that those companies that are granted the right to leeway and greater reporting freedom have a track record that should be emulated. With the inadequate measurement and reporting system currently in place, this will require in-depth internal reviews, audits, and verifications to assure only the most positive corporate role models are selected.

We must go beyond external corporate public appearances of looking good to find those companies that are doing good. After over a decade of accepting poor to mediocre performance, a norm of mediocrity has been established. We must signal a change from that standard by making it clear that we cannot continue to do business as usual. Those companies selected for such roles of honor should be reviewed for upward mobility, centrality of assignments, fairness in promotions and pay, uniformity of assignment and promotion selection procedures, internal working climates, and the status of the internal relationships between traditional and nontraditional managers, turnover rates, and all other aspects of a comprehensive picture. If undeserving companies are selected, we will send more wrong messages and successfully gaining the increased support of smaller companies will in part be a direct function of the tone and enforcement policies established with large companies.

Recommendations

Create an organization that will be driven by fact, research data, and problem solving. Assure that managerial competence and policy is the driving force and that politics and ideology are not allowed to contaminate the end product.

Greatly expand and professionalize existing research. Create sources of funding that assure objective research that is not self fulfilling can be focused on specific areas in order to make realistic evaluations and analysis.

Provide the means for widespread dissemination of objective research findings to assure that fear, self serving interests, and paranoia are not allowed to unnecessarily contribute to social tensions by allowing people to believe they are unfairly losing ground to other groups.

Create a new government control and reporting system that measures beyond the bulk numbers and identifies, turnover, promotion rates, assignment centrality, rates of accession, trends in the feeder pools of future managers, and other meaningful, indicators and signposts of progress. It is unconscionable, that there are no completely reliable comprehensive measures of the current status of equal employment after over 20 years of law.

Specifically identify, study, and define the means of overcoming or at least controlling the specific common and the unique obstacles facing each group of Americans. If we are to create a level playing field, we must know what obstacles have to be leveled.

Explore methods of displaying bipartisan leadership on the issue of the "rightness" of America having, implementing, and realizing those policies that will move toward a united, socially cohesive, and tranquil society. Include key corporate leaders in this process in order to demonstrate positive individual and corporate role models. Motivate companies to be innovative in their problem solving by recognizing their efforts with public acknowledgment.

Create a means for companies to honest without penalty. We need a comfort zone where both achievements and failures can be openly discussed beyond the veneer of appearance and image.

Give great attention to how we can better educate future leaders in both colleges and graduate schools on the dynamics that exist between people in heterogeneous work environments. We cannot manage what we do not understand.

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[7] The literature is so extensive as to be impossible even begin listing it. This briefest mention is from "The Authoritarian Personality by Adorno, Brunswik, Levinson, and Sanford Abridged Edition, W.W. Norton & Co. 1982, first published 1950 by the American Jewish Cmty.

[8] Nathan Glazer, "Social Characteristics of American Jews, 1654-1954" American Jewish Yearbook, vol. 56 (1955), p.9.

[9] Nathan Glazer and Daniel Patrick Moynihan, Beyond The Melting Pot (Cambridge: MIT Press, 1970), pp.138-9.

[10] Stephen Steinberg, The Ethnic Myth: Race, Ethnicity, and Class In America (Beacon Press, Boston, 1982), pp. 227

[11] Stephen Steinberg, pp. 237-8

[12] Steinberg pp. 239-240

[13] In Steinberg pp. 240

[14] Stephen Steinberg, The Academic Melting Pot (New York: McGraw-Hill, 1971), chap. 5. In The Ethnic Myth pp. 249

[15] "Education at Harvard," Change, September 1973, p.27. In Steinberg, The Ethnic Myth P. 250

[16] Steinber, The Ethnic Myth p. 250

[17] Much of the material in this section is based on "Reverse Discrimination: The Study of a Protest Movement" by Judith Lee Conboy, a Doctors Dissertation submitted in satisfaction of a Doctor Of Philosophy Degree at the Department of Sociology, Kansas State University, Manhattan Kansas, 1978

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[28] Eliot R.Smith; Purdue University and James R.Klugel University of Illinois at Urbana - Champaign. In Social Psychology Quarterly; 1984, vol.n47, no. 1, 81-95.

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[31] IBID The Negro Revolution, p. 138

[32] The Negro Revolution IBID pp. 125-153

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[34] See Gordon Allport, The Nature Of Prejudice ch. 29 1954

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THE ORIGINS OF AFFIRMATIVE ACTION

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THE ORIGINS OF AFFIRMATIVE ACTION

I. Introduction

The modern debate over affirmative action, if it is possible to debate a concept without defining it, has occupied us for almost 20 years without resolution of the underlying issues or contributions to clarity with respect to what divides us.[1]

The Supreme Court of the United States did not enter the modern debate, except to deny review of many of the employment cases, until DeFunis v. Odegaard.[2] A dissent by Justice Douglas spawned a host of commentary and the debate raged until the court decided Regents of the University of California v. Bakke.[3] Bakke added fuel to the fire and inundated us with the heat of advocacy -- pro and con -- but neither enlightenment nor resolution has emerged from the controversy. Professor Herbert Hill has reported that the anti-affirmative action groups seem to have virtually unlimited access to the media and are responsible for vast amounts of material in virtually every form.[4]

The debate seems never ending. The April issue of the Harvard Law Review[5] includes the latest installment in the "scholarly journals"[6] The most recent book to come to my attention, dedicated to Sidney Hook, is entitled Out of Order -- Affirmative Action and the Crisis of Doctrinaire Liberalism.[7]

Sidney Hook has been leading the attack on affirmative action programs, particularly in institutions of higher learning, and this new book acknowledges a whole panoply of personalities who have opposed affirmative action.[8] In these two recent volumes there are 18 pages in favor of affirmative action and 210 against.

What has this to do with an essay entitled "The Origins of Affirmative Action"? It illustrates the difficulty in identifying the roots of the concept when there is little agreement as to its content. Frequently we find the opponents' targets to be much broader than any definition of "affirmative action." For example, Capaldi, in his book Out of Order, proports to show that "affirmative action was the inevitable consequence of the social philosophy known as doctrinaire liberalism, that doctrinaire liberalism is the entrenched philosophy of academic social science, and that affirmative action very nearly destroyed the university as a viable independent institution -- and it would have if that policy had remained unchecked."[9] In chapter 7, Mr. Capaldi asserts that "state activism in general and affirmative action in particular will lead to fascism."[10]

Morris Abram, a Commissioner of the United States Commission on Civil Rights, argues that -- "The civil rights movement has turned away from its original principled campaign for equal justice under law to engage in an open contest for social and economic benefits conferred on the basis of race or other classifications previously thought to be invidious.... The civil rights movement, by my lights, should turn its attention back to first principles -- the zealous regard for equal opportunity and the promotion of color blind law and social policy -- and away from color conscious remedies that abandon principle and lead us further from a society free of the bane of racial discrimination."[11]

Professor Randall Kennedy, an advocate of affirmative action, provides us with a definition as well as an admonition:

> Affirmative action refers to policies that provide preferences based explicitly on membership in a designated group. Affirmative action policies vary widely, ranging from "soft" forms that might include special recruitment efforts to "hard" forms that might include reserving a specific number of openings exclusively for members of the preferred group.
>
> "Affirmative action," "preferential treatment," and "affirmative discrimination" are used as synonyms. At the level of semantics, "affirmative action" avoids the problem of preference that is inescapable if one uses the term "preferential treatment." It also avoids the problem of discrimination made salient by the term "affirmative discrimination." On all too many occasions, however, proponents of affirmative action have hurt their own cause by evading the difficulties posed and cost incurred by the policy they advance. These difficulties and cost will not disappear behind euphemistic terminology. To properly convince the public that these costs are worth shouldering, proponents of affirmative action will have to grapple straight-forwardly with them -- a process which involves, at the least, conceding their existence....[12]

My choices of illustrations of the confusion which faces us in dealing with affirmative action are strictly by chance. They come from two volumes received by the University of Wisconsin Law Library April 24th and April 29th of 1986. After nearly two decades of debate the "scholarly community" is still mired in an ideological/philosophical dialogue.

Professor Kennedy provides us with a meaningful focus. He reports that "opponents of affirmative action maintain that commitment to a nonracist social environment requires strict color-blindness in decisionmaking as both a strategy and a goal. In their view, 'one gets beyond racism by getting beyond it now: by a complete, resolute, and credible commitment never to tolerate in one's own life -- or in the life or practices of one's government -- the differential treatment of other human beings by race.'"[13]

Proponents of affirmative action insist that only malign racial distinctions should be prohibited; they favor benign distinctions that favor blacks. Their view is that "In order to get beyond racism, we must first take race into account" and that "in order to treat some persons equally, we must treat them differently."[14]

Herbert Hill has asserted that "A broader historical perspective reveals that the attack against affirmative action constitutes the latest in a continuing series of efforts to perpetuate the privileged position of whites in American society ... As the gains of the 1960's are eroded, the nation has become even more mean-spirited and mendacious."[15]

At face, however, the positions represented by Abrams and Capaldi deny such mean-spirited motives. In the words of Professor Kennedy both proponents and opponents of affirmative action have one thing in common: the desire to get beyond racism. The issue thus phrased becomes is affirmative action, any kind of affirmative action, an appropriate means to reaching the desired end?

At the risk of sounding "anti-intellectual," the search for origins or solutions to affirmative action problems does not lie in discourse on doctrinaire liberalism or conservatism. Abstract theories of social scientists, political or economic, rarely if ever guide the hands of practical leaders in search of workable solutions to real and immediate problems. Nor does history sustain the position that this country has been concerned with color blindness. In fact, from our Nation's inception it has acted in a color conscious fashion. Historically, in most instances that color consciousness was used for malignant purposes. In some few, racial classifications were used for the benefit of those so classified. It is only in the most modern of times that such benign programs have been artfully attacked as "reverse discrimination" and labeled undesirable, illegal, and unconstitutional.

With due respect to the intellectuals, it is what the Senate and the House of Representatives of the United States in Congress assembled do ordain that determines the rights, pains and privileges distributed amongst us. Other instruments of our governments -- federal, state, and local -- also make these determinations. As history attests, those determinations have proven to be both good and bad. Much of the good has been discarded and the bad retained, and vice versa. Let me suggest that the legal and constitutional origins of affirmative action are readily discoverable by an honest reading of the legislative history of the Fourteenth Amendment and the Reconstruction era civil rights legislation. Let me further suggest that there can be no credible argument made that this country's constitution does now, or ever did, require color blindness. Our governments have endorsed or encouraged various "remedial" programs, and it is from those programs that we must abstract the functional definition of affirmative action.

II. The Origins of Affirmative Action

A. The Dim Dark Past

If we are to shed any light on the subject at hand it is necessary, briefly, to note the historical contexts which support this Nation's effort, spasmodic as it has been, to ameliorate a pervasive condition of inequality affecting all aspects of the lives of its most numerous minority. For a well documented statement of the status of black people in America from its inception to 1857, one has only to read Chief Justice Taney's opinion for the Court in Dred Scott v. Sandford.[16] For all those who would assert that the Constitution of the United States is color blind, that case, as irrefutable constitutional history, lays that argument to rest. It is clear beyond peradventure that the founding fathers from the Declaration of Independence to the signing of the Articles of Confederation make clear that the brave statement "all men are created equal" did not include blacks. "But there are two clauses in the Constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the Government then formed."[17] Moreover, the court's decision includes the status of blacks in both slave and non-slave states and establishes that all of those documents were indeed color conscious to the detriment of the condition of the black people in America. "... the language of the Declaration of Independence and of the Articles of Confederation, in addition to the plain words of the Constitution itself; ... the legislation of the different states, before, about the time, and since the constitution was adopted; ... the legislation of Congress from the time of its adoption to a recent period; and we have the constant and uniform action of the Executive Department, all concurring together and leading to the same result."[18]

It took both the Civil War and constitutional amendments to affect the conditions documented in Dred Scott v. Sandford. The Emancipation Proclamation was issued by the president in his capacity as Commander-in-Chief of the armed services. It liberated slaves only where the confederates were in control. The Thirteenth Amendment, which declared slavery abolished, extended the Emancipation Proclamation throughout the United States as part of the Constitution. However, the Constitutional Declaration of Freedom did not provide protection to the Negro in his effort to use the newly won freedom.[19]

B. The "Genesis" of Affirmative Action[20]

I have defined affirmative action as "public or private actions or programs which provide or seek to provide opportunities or other benefits to persons on the basis of, among other things, their membership in a specified group or groups." This broader formulation permits me to direct attention to the period from the closing days of the Civil War until the end of the civilian reconstruction.[21]

There is no dearth of research and writing on the Fourteenth Amendment to the Constitution.[22] While the scholarship includes vigorous debate and disagreement about the scope of the Fourteenth Amendment, "The one point on which historians of the Fourteenth Amendment agree, and, indeed, which the evidence places beyond cavil, is that [it] was designed to place the constitutionality of the Freedmen's Bureau and civil rights bills, particularly the latter, beyond doubt.... The doubt related to the capacity of the Thirteenth Amendment to sustain this far reaching legislative program."[23]

Congress adopted a series of social welfare laws expressly delineating the racial groups entitled to participate in the benefits of each program. These race specific measures were adopted over the objection of critics who opposed special assistance to a single racial group. The most far reaching of the programs was the 1866 Freedmen's Bureau Act, which was enacted less than a month after Congress approved the Fourteenth

Amendment. The evidence is overwhelming that the major reason for the adoption of the amendment was to provide a clear constitutional basis for such race conscious programs.[24]

What is striking about the reconstruction era legislation is the range and diversity of the measures providing race conscious relief. The Bureau of Refugees, Freedmen and Abandoned Lands, popularly known as the Freedmen's Bureau, was authorized by Congress in 1866 to provide land and buildings and to spend designated funds for the "education of the freed people," but could provide no such aid to refugees or other whites.

The law also conveyed a number of disputed lands to heads of families of the African race and authorized the sale of some 38,000 other acres to black families who had earlier occupied them under the authority of General Sherman.

In 1867, Congress made special provision for disposing of claims for "pay, bounty, prize money or other moneys due colored soldiers, sailors or marines, or their legal representatives."

Congress awarded federal charters to organizations established to support aged or indigent and destitute colored women and children, to serve as a bank for persons heretofore held in slavery in the United States, or their dependents, and to educate and improve the moral and intellectual condition of the colored youth of the nation (these youths were also provided assistance in the form of funds and land grants). Express appropriations were made for the relief of freedmen or destitute colored people in the District of Columbia and for a hospital for freedmen established in the District. No comparable federal programs existed for -- or were established -- for whites.[25]

It is submitted that one of the primary purposes of the passage of the Fourteenth Amendment to the Constitution was to insure that race conscious remedies, enacted pursuant to the power of Congress for the benefit of an entire class of people, were constitutional. While some of these benefits were for specific, individual types of claims (such as pay, bounty and prize money or other moneys due colored soldiers, sailors, or marines), most of the legislation was not restricted to identified victims of specific acts of discrimination. It was conclusively presumed that all members of the group had been harmed and were in need of assistance. Particularly pertinent is the legislation to educate and improve the moral and intellectual condition of the colored youth of the nation.

Although the Fourteenth Amendment, by its terms, applies only to the states, it is beyond doubt that one basis for its enactment was to provide constitutional authority for the series of Freedmen's Bureau Acts which involved, primarily, expenditure of funds for the benefit of minorities. The Fifth Amendment had earlier been applied, or misapplied, to protect property rights and the right to contract against the legislative efforts of the federal government.[26] This nation was rather late in recognizing the applicability of the Fifth Amendment's due process standard to conduct of the federal government which would violate the

Fourteenth Amendment if it were applicable.[27] The "reverse incorporation of the Fourteenth Amendment equal protection standard was accomplished in the fifties."[28] The 20th century application of the equal protection component in the Fifth Amendment to federal government efforts to prohibit invidious discrimination should not be used to strike down efforts to do what was clearly an objective of the passage of the Fourteenth Amendment. It would be a perverse utilization of the reverse incorporation of equal protection in the Fifth Amendment to utilize it for that purpose.

In 1875 Congress passed a new Civil Rights Act. The Act declared that "All persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theaters, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude." This was the first public accommodations act, as it were, and the Supreme Court declared it unconstitutional. The court contended that neither the Fourteenth Amendment nor the Thirteenth Amendment provided Congress with power to enact such legislation. Neither amendment guarded against private wrongs and redress for such wrongs must be provided by state law rather than federal law.[29]

By 1896, with the issuance of the decision in Plessy v. Ferguson,[30] the first reconstruction was officially over. That case validated the odious concept of "separate but equal." Although it was a transportation case, by extrapolation it provided the basis for widespread segregation on the basis of race.[31]

C. Affirmative Action and the New Deal

By the advent of the New Deal, segregation was a firmly entrenched institution in the United States. However, the awesome economic problems the country faced during the thirties resulted in some antecedents of modern affirmative action. The principle of equal job opportunity appears in the Unemployment Relief Act of 1933, which, as part of the New Deal effort to address massive unemployment and other problems of the sick economy, provided: "[I]n employing citizens for the purpose of this act no discrimination shall be made on account of race, color, or creed..."[32] Much of the legislation of that decade contains similar non-discrimination provisions related to employment and training. Legislative efforts at equality included the Civilian Conservation Corp.,[33] Civilian Pilot Training,[34] the National Youth Administration,[35] and nurses training.[36] These programs were color conscious. They provided for "separate but equal" benefits. From 1896 to 1954 and beyond, this nation's laws mandated "separate but equal" everything for blacks. Affirmative action is a modern effort to ensure that the demise of segregation is not also the end of participation by blacks in the bounties of the country.

Although the National Industrial Recovery Act of 1933 (the NIRA)[37] did not contain employment discrimination prohibitions, its regulations, issued by the administration, prohibited such discrimination.[38] Employment discrimination in construction projects under the public low rent housing and defense housing programs was also barred by administrative action.[39] Action was also taken to prohibit discrimination in connection with other public works programs undertaken to absorb the unemployed poor. More specifically, the Public Works Administration (PWA)[40] had requirements mandating the use of quotas in employment as early as 1934. As late as 1958, the Public Housing Administration had a quota apparatus in effect.[41]

III. Affirmative Action in Employment -- The Genesis of the Current Debate

To this point in our discussion, we have traced the "roots" of affirmative action from our early Constitution up to the New Deal Era. As we exit the New Deal Era we concentrate more precisely on the employment aspects of affirmative action. It is the employment arena which has occupied center stage in the modern debate on affirmative action, although it is not unconnected to efforts at school desegregation. Some marginal effort has been undertaken with regard to contracting and subcontracting and to a lesser extent attention has been directed to housing discrimination. However, the primary thrust and parry in affirmative action in modern America has been in the employment arena. It is to that area of law and development we now turn.

A. Early Executive Order Programs and Affirmative Action

With less creativity than those who insist that the Fourteenth Amendment mandates a color blind constitution, it could be argued that the first executive order interdicting employment discrimination issued by President Roosevelt in 1941 authorized affirmative action. The Roosevelt order declared that it was "The policy of the United States that there shall be no discrimination in employment ... because of race, creed, color or national origin." It further declared it to be the duty of employers and labor organizations "to provide for the full and equitable participation of all workers in defense industries without discrimination."[42] The President asserted that full manpower (human resources) utilization was the national goal and the exclusion of blacks was a major barrier to the achievement of this goal.

I suggest that the terms "full and equitable participation in employment" could have been authorization for affirmative action as we know it today had the Roosevelt program lasted long enough for such a creative interpretation to emerge. Additionally, had more sophisticated monitoring of the early anti-discrimination programs been devised so as to demonstrate their fecklessness, the obvious next step would have emerged much earlier. Between 1941 and 1961 the presiding presence in civil rights was the ugly face of overt, crude and intentional discrimination. The first priorities of the earlier programs were to address these more obvious and demeaning conditions. It should not go unremarked that from 1941 to 1961 successive Presidents maintained employment discrimination programs of one sort or another. It should also not go unremarked that during World War II and the Korean conflict, special efforts were made to recruit minorities into various military programs. While World War II was fought as a segregated endeavor, special recruitment efforts were directed to attract blacks into the new navy, into the air force and into the segregated units of the army. At least where the better educated black was concerned, the armed services competed to attract them to their programs. Specialized recruitment is a form of affirmative action.

B. The Eisenhower/Nixon-Kennedy-Nixon Connection

It would, I believe, come as a shock to former President Nixon and his Secretary of Labor George Schultz, now the Secretary of State in the Reagan Administration, to discover that they are "doctrinaire liberals."[43] It would probably be stretching the term "liberal" as descriptive of the overall posture of the late President John F. Kennedy. However, without further attempt to deal with the assertion that affirmative action was the inevitable consequence of the social philosophy known as "doctrinaire liberalism,"[44] I suggest that affirmative action in employment as instituted by executive orders of the presidents has its genesis in conservatism.[45]

Although I cannot document a direct causal link between the final report to President Eisenhower from the Committee on Government Contracts[46] and the use of the term "affirmative action" in Executive Order 10925[47] that report of the Committee, chaired by then Vice President Nixon, concluded the following:

> (1) Overt discrimination in the sense that an employer actually refuses to hire solely because of race, religion, color or national origin is not as prevalent as is generally believed. To a greater degree, the indifference of employers to establishing a positive policy of non-discrimination hinders qualified applicants and employees from being hired and promoted on the basis of equality.
>
> The direct result of such indifference is that schools, training institutions, recruitment and referral sources follow the pattern set by industry. Employment sources do not normally supply job applicants regardless of race, color, religion or national origin unless asked to do so by employers. Schools and other training sources frequently cannot fill non-discriminatory job orders from employers because training may take from one to six years or more.
>
> .... (2) There is no justification for discrimination in employment because of race, color, religion or national origin in work performed by contractors paid by the federal funds....[48]

Lyndon Johnson gave credit for the drafting of Executive Order 10925 to Abe Fortas, then a Washington lawyer.[49] Reflection upon the implications of the final report of Vice President Nixon strongly suggests that it is the conceptual precursor of what we now refer to as institutional racism or institutional sexism -- patterns of past discrimination are built into institutional systems so they are recreated without the necessity of malice.

I do not know whether Abe Fortas was reacting specifically to these conclusions when the affirmative action requirements of Executive Order 10925, continued in the current Executive Order 11246,[50] were written but the requirement of affirmative action in that executive order is responsive to the problems identified by the Nixon Report.

Prior executive order programs had interdicted intentional discrimination because of race or color but, as the Nixon Report emphasizes, indifference is hardly responsive to prohibitions which speak to intentional, malicious misconduct. Executive Order 10925 not only prohibited the traditional forms of discrimination which was the subject of prior executive orders, but required that contractors pledge to take affirmative action to ensure that applicants would be employed and treated during employment without regard to race, color, religion or national origin. The executive order also gave to the President's Committee the power to adopt such rules and regulations and issue such orders as it deemed necessary and appropriate to achieve the purposes of the executive order. This generous grant of power is not unlike that traditionally given by Congress to administrative bodies, or to the courts, to achieve broad objectives.

The original rules and regulations for Executive Order 10925 were issued on June 9, 1961. Notice was published in the Federal Register[51] and interested persons were given an opportunity to submit written and oral data, views, and arguments concerning the proposal. Thereafter the first set of rules and regulations were duly promulgated.

The affirmative action commitment in Executive Order 10925 received less attention in the early days of the Kennedy Administration. Despite the optimism of Mr. Nixon regarding the primary problem of employer indifference, discrimination in 1961 was rank, crude and overt. In the first week of the new committee's existence, the NAACP announced its intentions of filing a complaint against a contract granted to the Lockheed Corporation on April 7, 1961. What emerged from that initiative was the signing by the Lockheed Company and the government of a statement promising far-reaching reforms. This became the prototype for future "Plans for Progress."[52]

The first years of the executive order program focused on the complaint process and voluntary accommodations. The Plans for Progress program became the instrument for affirmative action. Most of the largest corporations joined the Plans for Progress which followed a pattern of consultation with the committee representative and the development of a plan. The pattern of such plans committed the companies to anti-discrimination in all phases of their personnel policies, with special emphasis on training and education programs; affirmed the company's intentions to take positive action to recruit minority group applicants for employment, training, and promotion; promised dissemination of the company's equal opportunity policies to company personnel, recruitment sources and minority groups; detailed how those pledges were to be implemented; and stated that progress reports would be filed at regular intervals with the President's Committee.[53]

It is reported that 103 Plans for Progress companies, over periods ranging from six months to two years, increased the percentage of Negroes among their total work force from 5.1% to 5.7%, a rise of less than 1 percentage point. That less than 1 percent rise among Plans for Progress signers represented a gain for Negroes of 40,938 of the companies' 341,734 vacancies -- more than double the representation of blacks among those hired before Plans for Progress.[54]

While most of these affirmative action undertakings were "voluntary" they were first stimulated by the complaint and enforcement process and in a sense represented "remedy" in settlement of, or in avoidance of, more aggressive enforcement actions. This aspect of the executive order commitment -- to take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to race, color, creed or national origin -- which includes hiring, training, promotion and other terms and conditions of employment was clearly recognized as part of the contractual obligation enforceable by actions of the federal government.[55]

IV. The Civil Rights Act of 1964

The passage of Title VII of the Civil Rights Act of 1964, rather than diminishing the significance of the president's executive order program, appreciably strengthened it.

> The record-keeping and report-filing provisions of Title VII, by excepting those who file under the federal contractor program, plainly contemplate that program's continuance. Equally explicit is section 716(c)'s inclusion of those responsible for the program among the various agency representatives who are to be invited to a conference 'for the purpose of making plans which will result in the fair and effective administration of this title when all its provisions become effective.' Finally, Senators Clark and Case informed their colleagues that 'Title VII, in its present form, has no effect on the responsibilities of the Committee or on the authority possessed by the President or Federal agencies under existing law to deal with racial discrimination in the areas of Federal Government employment and Federal contracts. (See Congressional Record, February 8, 1964, pp. 2574-75.)[56]

With this overt congressional recognition and ratification of the President's Executive Order Program there was less need from a technical point of view to continue the president's committee format with its inter-agency component made advisable by the existence of the Russell Rider.[57]

In 1965, President Johnson issued a series of orders, including Executive Order 11246.[58] In addition to incorporating the substantive aspects of the Kennedy orders, E.O. 11246 changed the organizational structure of the program substantially. It delegated to the Secretary of Labor full authority to administer the provisions of the executive order relating to non-discrimination in employment by government contractors and subcontractors. The Secretary established the Office of Federal Contract Compliance (OFCC) as the operating arm of the new power and subdelegated all authority except that for promulgating general rules to this constituent entity of the Department of Labor. Under this new structure the program emphasis was to shift gradually from voluntarism to enforcement[59] and the development of the affirmative action obligation as an explicit requirement was to emerge. The separate Plans for Progress program receded in importance and ultimately ceased to exist.[60] In 1969 the Plans for Progress program was merged with the National Alliance of Business which had as its goal providing large numbers of full time jobs for disadvantaged and unemployed persons including minorities.[61]

Title VII, in establishing the Equal Employment Opportunity Commission, did not take the traditional form of a commission. While it had the general trappings of such a quasi-legislative administrative, judicial body, it lacked power to enforce its own statute. The commissioners could investigate and, if probable cause was found, conciliate but it had no power to compel. Such power as exists was given over to the plaintiffs or "private attorneys general" and to some extent to the United States Department of Justice in pattern or practice cases.

In addition, legal actions involving enforcement of Title VII proceeded in the federal district courts rather than in courts of appeals with limited judicial review of final agency action. However the law did provide expansive power in the federal courts to issue orders once unlawful employment practices had been established. Section 706(g) of the original statute provided the court with authority to "enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate..." Congress also saw fit in section 706(h) to ensure that the limitations of federal courts sitting in equity imposed by the Norris Laguardia Act would not be read into Title VII.[62]

In section 707, the pattern or practice provision, Congress provided that the attorney general could bring an action "requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to ensure the full enjoyment of the rights herein described."[63]

It should be noted that neither the language granting to the courts power to issue injunctions or order affirmative action, nor the language describing the scope of the attorney general's request for relief in section 707, are limited to make whole relief to identified victims of discrimination. These provisions of the statute become the basis for affirmative action of a different sort than that we have previously discussed in connection with the president's executive order programs.

V. Affirmative Action Emerges From the Shadows[64]

The issuance of the Revised Philadelphia Plan by the U.S. Department of Labor precipitated the full scale debate over quotas/goals and timetables and catapulted affirmative action into the center stage of the equal employment arena. From the beginning, OFCC had handled construction contracts in a different manner from supply contracts and had been frustrated in its efforts to develop a method to promote minority employment in that industry. Periodic compliance reviews or employment reports, of limited effectiveness in nonconstruction employment, are ill-suited for the construction industry. OFCC developed special area plans in an attempt to grapple with this problem. Between 1966 and 1967 four such plans were developed in four cities: St. Louis, San Francisco, Cleveland, and Philadelphia.[65] The Comptroller General of the United States in 1968 determined that the plan in existence in Philadelphia, which like earlier plans required that affirmative action requirements be determined after bids were made, was in violation of competitive bidding principles.[66] The Comptroller General had also raised the issue of the compatibility of goals and timetables with Title VII.

It should not go without comment that the flap over goals or quotas was precipitated by the Philadelphia Plan which was issued by the United States Department of Labor presided over by Secretary of Labor George Schultz during the Nixon Administration. Although the program was an an equal employment initiative to revitalize the construction industry program, the most significant by-product of it was to provide the fundamental underpinnings that made it possible to articulate standards for affirmative action programs applicable to nonconstruction employers. We noted elsewhere that governmental imposition of quotas or goals as a condition for construction contracts was not novel.[67] However, in 1969, in reconstructing the Philadelphia Plan, the Department of Labor was not proceeding with this prior history in hand. Those earlier programs were never challenged and there were no court decisions available from which to abstract much guidance.

The Department of Labor utilized the rule making process to establish the nature of the problem in the Philadelphia area, and the statistical basis upon which "reasonable" goals and timetables could be prescribed for those employers subject to the plan. The hearings established the exclusion of non-whites from the construction unions in the area; a continuing need for skilled construction workers brought about by attrition and the creation of new jobs not being filled by existing union apprenticeship programs; and the availability in the Philadelphia area of minority employees with sufficient skills to participate in the construction industry. The goals which were set forth in the plan were projected over a four year period and were most modest. If they were fully achieved, no more than half of projected job openings would be filled by the new minority recruits. Total compliance at the maximum level would have resulted in a lower percentage of black workers on that project than the percentage of black construction workers in the labor market area.

Critically, and entirely ignored by opponents of affirmative action, the maximum requirement of the government's program was good faith effort to achieve the goals. Employers were prohibited from engaging in discrimination, overt discrimination, on the face of the order. The plan did not establish quotas, the plan did not require the employer to hire the unqualified, the plan did not require the employer to discriminate against nonminorities. What the plan required, an adaptation of concepts in our National Labor Relations Law, was good faith effort. Good faith effort is a modification of the concept of good faith bargaining and is a process not a result. An employer's failure to meet the goals and timetables precipitated at most an investigation into the efforts utilized to achieve those goals. The employer's meeting of the goals and timetables established presumptive compliance with the executive order and, unless specific complaints of discrimination were lodged, satisfied his obligations as a federal contractor.[68]

The Philadelphia Plan was immediately challenged in the courts as a violation of Title VII, as exceeding the Secretary of Labor's authority under the executive order, as a violation of the National Labor Relations Act, as a violation of the Fifth and Fourteenth Amendments of the United States Constitution, and as exceeding the authority of the President under the Constitution. The court rejected all such claims and thus established judicial authority for the legality of the President's executive order program, including the use of goals and timetables.[69]

Subsequent challenges to goals and timetables in the construction industry have been unsuccessful.[70] The Supreme Court has declined to review any of these cases although several have been cited with approval in some Supreme Court opinions.[71]

Once the Department of Labor had been successful in defending the use of goals and timetables against legal attack, it moved to include such requirements in the affirmative action obligations of non-construction contractors. It issued Order No. 4[72] which, among other things, requires utilization analysis and goals and timetables where affected class members are determined to be underutilized. The Department's confidence was no doubt increased as a result of the congressional hearings over the Philadelphia Plan and the attempt by appropriation rider to prohibit the Department of Labor's enforcement of any such requirements.[73]

There seems to be even stronger support for the continued existence of affirmative action programs under the executive order in the actions and refusals to act of the Congress in 1972. Not only did Congress reject crippling amendments to the president's existing program, but it enacted positive law which gives affirmative action obligations statutory status. In section 718 of the Civil Rights Act of 1964 as amended in 1972, Congress provided that no government contract with an employer could be terminated or suspended by an agency or officer of the

United States under any EEO law or order where the employer had an affirmative action plan which had previously been accepted by the government during the past few months without first according the employer a hearing and adjudication under the Administrative Procedure Act. Curiously there was a proviso in this law which excepts from its scope employers that have substantially deviated from previously agreed to affirmative action plans.[74]

There have been a series of cases involving nonconstruction employers in which various aspects of the executive order program have been challenged. The most pertinent one regarding challenges to affirmative action, including goals and timetables is Legal Aid Society of Alameda County v. Brennan.[75] The opinion in this case has substantial discussion of Revised Order No. 4 and the Court concludes that when Congress adopted the Equal Employment Opportunity Enforcement Act of 1972, it ratified the essential features of the affirmative action program reflected in the revised order.[76]

VI. Affirmative Action in Employment -- The Current Legal Status

What frequently frustrates clarity in modern debate is the failure by many to recognize, or the intentional refusal by some to clarify, that affirmative action in employment includes not one concept but two. As was pointed out by the Court of Appeals for the First Circuit in 1973[77] there are two contexts in which the goals and timetables aspects of affirmative action have been constitutionally tested and upheld:

> The first is where courts have ordered, pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(g), remedial action for past discrimination. In fulfilling "their duty to render a decree which will so far as possible eliminate the discriminatory effects of the past ...", Louisiana v. United States, 380 U.S. 145, 154 (1965), courts have ordered unions to grant immediate membership to a number of minority applicants, United States v. Wood, Wire and Metal Lathers International Union, Local No. 46, 471 F.2d 408 (2nd Cir. 1973), cert. denied, 412 U.S. 939 (1973); to begin an affirmative action minority recruitment program, United States v. Sheet Metal Workers International Association, Local No. 36, 416 F.2d 123, (8th Cir. 1969); to match normal referrals with minority referrals until a specific objective has been obtained, Heat and Frost Workers, Local 53 v. Vogler, 407 F.2d 1047 (5th Cir. 1969); or to take on a certain number of minority apprentices for each class of workers, United States v. Iron Workers Local 86, 443 F.2d 544 (9th Cir. 1971), cert. denied, 404 U.S. 984 (1971). Courts have also ordered employers to hire minority employees up to 30% of the total work force, Stamps v. Detroit Edison, 365 F. Supp. 87 (E.D. Mich., 1973); to hire one minority worker every time two white workers were hired, up to a certain number, Carter v. Gallagher, 452 F.2d 315 (8th Cir. 1971), cert. denied, 406 U.S. 950 (1972); and in our own Castro v. Beecher, 459 F.2d 725 (1972) we order that black and Spanish speaking applicants for police positions, who had failed to measure up to a constitutionally impermissible set of hiring standards, be given priority in future hiring.[78]

It is worth pausing to note that the series of cases cited as illustrations of the affirmative action as remedy under Title VII include the first two court of appeals cases litigated. In Local 53 v. Vogler and United States v. Sheet Metal Workers International Union, the first two cases to reach the court of appeals, the issue was joined over whether or not Title VII of the Civil Rights Act of 1964 empowered the courts to require numerical hiring. In the face of attack in Local 53 v. Vogler on a specific mandate of one to one referrals, the court rejected claims of limitation on its power to grant such relief. That the courts have such authority under Title VII is also recognized in Regents of the University of California v. Bakke, 438 U.S. 265 at 301 (1978) (opinion of Justice Powell). The issue of specific authority under Title VII to grant such relief is currently challenged in the Supreme Court in EEOC v. Local 28 and 638 of the Sheet Metal Workers.[79]

The origins of this type of affirmative action, no doubt, have their roots in equity which was originally a separate body of law administered in England by the Court of Chancery. The Chancellors were committed to achieving equity, a higher justice than available under rigid legal rules and in the face of the inadequacy of available legal remedies. The more modern adaptations of the flexibility of equity to novel problems for which law provided inadequate solutions are illustrated by the independent administrative agencies which Congress has continued to establish to deal with particular problems. The generous grant of authority which usually accompanies those administrative agencies can also be found in most remedial legislation and, indeed, is specifically included in section 706(g) of Title VII of the Civil Rights Act. The Act empowers the court to issue orders requiring "such affirmative action as may be necessary to carry out the law."

The second context in which race has been recognized as a permissible criterion for employment is illustrated by cases which have upheld the executive order program against challenge,

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the leading case of which is Contractors Association of Eastern Pennsylvania v. Secretary of Labor, supra.

It is to be noted that the first context involves an order or a remedy directed by the court after an adjudication of the issue of discrimination or, in appropriate cases, after the parties consent to a decree. The second context involves programs which have been legislatively or administratively determined to be necessary by an appropriate public authority. The Supreme Court, in the school desegregation cases, has long recognized that public authorities other than the courts may have more flexibility and authority in dealing with issues of racial discrimination than does the court.[80] The Supreme Court in Fullilove v. Klutznick[81] reaffirms those cases in declaring that there is no requirement that Congress must act in a wholly color blind fashion.[82]

There is a growing number of programs throughout this land which require affirmative action, including goals and timetables. No one seems to know at this writing how many such programs exist in states and various local governments. Twenty-nine states plus the District of Columbia have some sort of affirmative action requirements relating either to employment or contracting including minority set-asides.[83] The National Association of Counties, which represents more than 2100 of the nation's 3106 counties, adopted a resolution committed to maintaining affirmative action goals and timetables and to increase minority hiring just this Spring.[84] There seems to be a whole host of state and local governments which have established affirmative action programs. They have acted in reliance upon the Supreme Court's evident approval of the appropriate use of such plans to deal with the intractable problem of employment discrimination.

VII. Affirmative Action -- The Current Status[85]

A. The Supreme Court's Affirmative Action Trilogy -- Bakke, Weber and Fullilove

Both the opponents and proponents of affirmative action have been dissatisfied with the treatment of the issue by the Supreme Court of the United States. However, a close reading of the three major cases in which the Supreme Court touched on the issue reveals that a majority of the court, although taking different analytical approaches, have affirmed the constitutionality and legality of appropriate affirmative action programs. In Regents of the University of California v. Bakke, supra, four justices found neither constitutional nor statutory imperfection in the affirmative action admissions program of the University of California Medical School at Davis. Justice Powell agreed that it was not per se unconstitutional to use race in such programs where the programs were appropriately crafted, but concluded that the particular program offended the law. In the process of articulating his view, Justice Powell referred to cases sustaining the legality of the President's Executive Order Program of goals and timetables as illustrative of the appropriate process whereby governmental entities could establish such programs.[86]

In United Steel Workers of America v. Weber the Supreme Court approved an affirmative action program over the protest of a white male employee alleging reverse discrimination. The program was voluntarily entered into by a company and a union although there is room for dispute as to how voluntary the action was. The basis of the plaintiff's claim of reverse discrimination was Title VII of the Civil Rights Act of 1964. The Court concluded that that Act did not prohibit voluntary action by parties to correct past discrimination by utilizing a program providing for one to one black/white participation. It should be noted that this program did not involve layoffs but involved opportunities for participation in a training program established by the parties. The Court gave some limited guidance as to the appropriate limits of affirmative action programs to avoid unnecessarily trammeling the rights of innocent workers.

In Fullilove v. Klutznick the Supreme Court examined a program, attacked as an unconstitutional quota, which had been established by the Congress of the United States. The law provided for a 10% set aside of certain federal contracts for minority contractors. There had long existed an executive order program attempting to facilitate the participation of minorities in the contracting activities of the government which had been less than successful. The Supreme Court sustained the constitutionality of this set aside program by a vote of 6 to 3, although, again, there are several opinions regarding the nature of the judicial scrutiny required. Critically, the Supreme Court determined that it is not the exclusive province of the judiciary to address the effects of past discrimination; rather, elected officials, such as chief executives and appropriate legislative bodies, are the more appropriate governmental entities to establish affirmative action programs to deal with the legacy of the past.

One Appeals court has indicated that the distillate of the Supreme Court's guidance reveals the following standards for reviewing affirmative action programs:

> "(1) that the governmental body have the authority to pass such legislation; (2) that adequate findings be made to insure that the governmental body is remedying the present effects of past discrimination rather than advancing one racial or ethnic group's interest over another; (3) that the use of such classifications extend no further than the established need of remedying the effects of past discrimination. Legislation employing benign racial preferences, therefore, must incorporate sufficient safeguards to allow a reviewing court to conclude that the program will be neither utilized to an extent nor continued in duration beyond the point needed to redress the effects of past discrimination."[87]

In Wygant v. Jackson Board of Education,[88] a case decided May 19, 1986, the Supreme Court addressed an issue left open in the Weber case regarding voluntary adoption of affirmative action plans by public employers. The City of Jackson and its union had negotiated a collective bargaining agreement which not only provided for affirmative action in hiring but protected minority teachers from layoffs. A majority of the Court concluded that the layoff provision was unconstitutional because it was not sufficiently narrowly tailored and because it maintained levels of minority hiring that had no relation to remedying employment discrimination. Difficulty in identifying specific court conclusions exists because there are a multiplicity of opinions comprising the majority. Justice Powell wrote for the plurality, Justice O'Connor concurred in all but Part IV of the Powell opinion, and Justice White concurred in the judgment separately. Justices Marshall, Brennan and Blackmun joined in a dissent, and Justice Stevens dissented separately. Despite this continued cacophony of opinions from the court it seems that a consensus has emerged on fundamental issues. (See concurring opinion of Justice O'Connor in the Wygant case.)

The focus here is on Justice O'Connor's views. As was true in the Bakke case, her vote is necessary to make a majority for disposition of the case, and states the principles which are supported by a substantial majority of the Court.

This case does not involve an interpretation and application of Title VII of the Civil Rights Act of 1964 as amended. Justice O'Connor believes that the Court is in accord that "a public employer, consistent with the Constitution, may undertake an affirmative action program designed to further a legitimate remedial purpose and which implements that purpose by means that do not impose disproportionate harm on the interests, or unnecessarily trammel the rights, of innocent individuals ..."[89]

The Justice concludes that the Court has rejected the proposition that there must be contemporaneous findings of discrimination before an employer may act. Rather "[W]here these employers, who are presumably fully aware both of their duty under federal law to respect the rights of *all* their employees and of their potential liability for failing to do so, act on the basis of information which gives them a sufficient basis for concluding that remedial action is necessary, a contemporaneous finding requirement should not be necessary.... Indeed, our recognition of the responsible state actor's competency to take such steps is assumed in our recognition of the state's constitutional *duty* to take affirmative steps to eliminate the continuing effects of past unconstitutional discrimination."[90] Justices Marshall, Brennan and Blackmun believe that the particular plan under attack was constitutional. Justice Stevens, arriving at the point by a different route, also concluded that the plan was constitutional and that the Court of Appeals should be affirmed.

What do we glean from this multiplicity of voices which may be of assistance in determining the status of affirmative action? I suggest a careful reading of the opinions identifies a substantial majority of the court (at least six members) for the proposition that public employers, like private employers under Title VII, may constitutionally adopt affirmative action programs giving certain special status to appropriate minorities. However, those programs must be carefully crafted. They must address the elimination of past discrimination and there must be some sort of record, a factual predicate if you will, of prior discrimination by the acting entity. Not even the plurality takes the position that the constitution requires color blind action. Justice Powell, joined by Rehnquist and Chief Justice

Berger, states that "we have recognized, however, that in order to remedy the effects of prior discrimination, it may be necessary to take race into account. As part of this nation's dedication to eradicating racial discrimination, innocent persons may be called upon to bear some of the burden of the remedy."[91] This suggests even Mr. Rehnquist has given up the color blind stance he took in Fullilove. If we set aside their argument over which level of scrutiny is required, the differences that separate the members of the court are over the types of affirmative action program adopted, not whether any such program can be constitutionally crafted.

It is possible, indeed not very difficult, to abstract guiding principles from these cases which would permit the establishment of appropriate affirmative action programs with confidence that such programs would garner the support of a majority of the members of the Supreme Court. It is unfortunate that because the Court speaks with so many voices the guidance is not apparent. However, in two pending cases there is an opportunity for the court to provide additional clarity.[92]

It seems apparent from the Wygant case that the Justice Department's assertion that affirmative action is limited to granting remedy to identified victims of discrimination has been rejected. Justice O'Conner finds agreement on the Court that plans need not be limited to remedying specific instances of identified discrimination for it to be deemed sufficiently narrowly tailored or substantially related to the correction of prior discrimination by the state actor. The Administration has also contended that Title VII restricts relief to identified victims of discrimination. That position has been rejected overwhelmingly by courts of appeals.[93]

The pending decision in Local 28 and Local 638 of the Sheet Metal Workers v. EEOC, supra, provides an opportunity for the Supreme Court to make clear, if clarity is necessary, that section 706(g) of Title VII of the Civil Rights Act also does not restrict relief to identified victims of discrimination, but permits the imposition of prospective relief which includes affirmative action plans. It seems that scope of relief was assumed by the Supreme Court in earlier cases (see Regents of the University of California v. Bakke at page 2754-55 (opinion of J. Powell)) and indeed that the scope of relief available under Title VII was addressed by the full court in Albermarle Paper Company v. Moody.[94] However, in the pending case the Justice Department has specifically challenged the scope of relief and it is hoped that the Supreme Court will lay that issue to rest.

Conclusion

The origins of affirmative action as remedy and affirmative action as program are fairly clear in our history. Though we have been preoccupied with the new label for the past two decades, the old concepts are firmly rooted in both our judicial and our legislative history. While the pattern has been painfully slow in coming, it seems the Supreme Court is finally etching out the dimensions of acceptable programs with sufficient clarity to advise the prudent who wish to craft affirmative action remedies which will withstand judicial scrutiny.

What this nation needs at this time is additional clarity from the Court and a clear mandate from the Congress. There is no doubt that an act of Congress requiring affirmative action for government contractors and specifically authorizing affirmative action plans as remedy for employment discrimination would pass constitutional scrutiny.

After the continued existence of executive order programs for more than 45 years, the civil rights community had previously, but mistakenly, concluded that affirmative action under the direction of the executive was safe. The attacks from the present administration on the entire structure of civil rights, and affirmative action in particular, suggest that Congress should act to limit the discretion of the president in the implementation of all equal employment opportunity programs. Making the basic affirmative action obligations of government contractors a matter of statutory duty would go far in resolving the current crisis.

Notes

1. I date the beginning controversy to the issue of the Revised Philadelphia Plan by the United States Department of Labor during the Nixon Administration in 1969. The Affirmative Action Plan was challenged in both the courts and the Congress without success. See e.g. *Contractors Association of Eastern Pennsylvania v. Secretary of Labor*, 442 F.2d 159 (3rd Cir. 1971); *Southern Illinois Builders Association v. Ogilvie*, 471 F.2d 680 (7th Cir. 1972); *Associated General Contractors of Massachusetts, Inc., v. Altshuler*, 490 F.2d 9 (1st Cir. 1973); see also Comment, "The Philadelphia Plan: A Study in the Dynamics of Executive Power," 39 *U. Chi. L. Rev.* 723 (1972); Jones, "The Bugaboo of Employment Quotas," 1970 *Wis. L. Rev.* 341.

2. 416 U.S. 312 (1974) (a law school admissions case which the Supreme Court accepted for review, then dismissed as moot).

3. 438 U.S. 265 (1978).

4. H. Hill, "Race and Ethnicity in Organized Labor: The Historical Sources of Resistance to Affirmative Action," 12 *The Journal of Intergroup Relations* 5 (1984). In footnote 120 he lists some of the vast body of views pro and con:

> The organized opponents of affirmative action are responsible for a vast body of material in every conceivable form and much too numerous for inclusive listing here. Nathan Glazer's *Affirmative Discrimination: Ethnic Inequality and Public Policy*, (New York, 1975) gathers all the arguments and is

representative of the polemic against affirmative action. For a reasoned criticism that places the issue in a historical context, see Alexander Saxton, "Nathan Glazer, Daniel Moynihan and the Cult of Ethnicity," *Amerasia Journal*, Vol. 4, No. 2, 1977, pp. 141-150. Typical of the sharp attacks on affirmative action is the statement of Morris B. Abram who was appointed vice-chairman of the U.S. Commission on Civil Rights by President Reagan. See, *Consultations on the Affirmative Action Statement of the U.S. Commission on Civil Rights*, Vol. 1, February 10 and March 10-11, 1981, Washington, D.C., pp. 25-29, also Miro Todorovich and Howard Glickstein, "Affirmative Action: Two Views," *Civil Rights*, A Staff Report of the Subcommittee on Constitutional Rights of the Committee on the Judiciary, United States Senate, Washington, D.C., 1976, pp. 69-90. The United Federation of Teachers in New York City and its parent organization, the American Federation of Teachers (AFL-CIO), have been among the most active opponents of affirmative action. Albert Shanker, president of both the New York Local and the international union, has since 1972 repeatedly attacked equal opportunity programs requiring hiring goals in his weekly column which appears each Sunday as a paid advertisement of the United Federation of Teachers in Section 4 of the *New York Times*. See for example: "A Quarrel with Quotas," July 16, 1972; "How Order Number 4 Promotes Employment Quotas," March 18, 1973; "Preferential Treatment v. Constitutional Rights," May 13, 1973; "The Quota Mentality v. the 14th Amendment," October 20, 1974; "Strong Voices Against Ethnic Hiring," January 12, 1975, and many others later. *Commentary*, published by the American Jewish Committee, has for more than a decade maintained a continuing attack upon affirmative action. The volume for one year, 1972, contains the following: Earl Raab, "Quotas by Any Other Name," January; Paul Seabury, "HEW & the Universities," February; "The Pottinger Papers: An Exchange on Affirmative Action," May; Elliott Abrams, "The Quota Commission," October; Paul Seabury, "The Idea of Merit," December. For a statement of the labor union position, see George Meany, "Labor And The Philadelphia Plan," A pamphlet based on an address by AFL-CIO President George Meany to the National Press Club, January 12, 1970, published by the AFL-CIO, Washington, D.C., n.d., unpaged. There is also a multitude of resolutions and statements denouncing "quotas" and "reverse discrimination" in the convention proceedings of many labor organizations and the AFL-CIO, together with frequent material in the trade union press. Among these are *Statement by AFL-CIO Executive Council on Seniority and Layoffs*, Washington, D.C., May 6, 1975; *Statement by AFL-CIO Executive Council on Title VII and* the Seniority System; Chicago, Illinois, July 30-31, 1975. See also "Last Hired, First Fired: Layoffs and Civil Rights," A Report of the United States Commission on Civil Rights, Washington, D.C., February 1977. For an example of the attacks upon affirmative action from influential supporters of Reagan administration policies see, Allen P. Sindler, "Equal Opportunity -- On the Policy and Politics of Compensatory Minority Preferences," American Enterprise Institute for Public Policy Research, Washington, D.C., 1983.

5. 99 Harv. L. Rev. No. 6 (1986).

6. M.B. Abram, "Affirmative Action: Fair Shakers and Social Engineers," 99 Harv. L. Rev. 1312 (1986) and R. Kennedy, "Persuasion and Distrust: A Comment on the Affirmative Action Debate," 99 Harv. L. Rev. 1327 (1986).

7. Nicholas Capaldi, Out of Order: Affirmative Action and the Crisis of Doctrinaire Liberalism (1985).

8. See Out of Order, p.ix.

9. Out of Order, p.2.

10. Out of Order, p.5.

11. 99 Harv. L. Rev. 1312 at 1312 (1986).

12. 99 Harv. L. Rev. 1327, n.1 (1986).

13. 99 Harv. L. Rev. 1327, at 1327-1328, citing Van Alystyne, "Rites of Passage: Race, The Supreme Court and the Constitution," 46 U. Chi. L. Rev. 775, 809 (1979) (emphasis in original).

14. Kennedy, 99 Harv. L. Rev. at 1327-28, citing Blackman, J., Regents of the University of California v. Bakke, 438 U.S. 265, at 407 (1978).

15. Hill, "Race and Ethnicity in Organized Labor," supra at page 41.

16. 60 U.S. (19 How.) 393 (1857).

17. Dred Scott v. Sandford, 60 U.S. 393 at 411 (1857).

18. Dred Scott v. Sandford, 60 U.S. 393 at 426 (1857). See also Bell, Race, Racism and American Law (1973), pp. 45-51.

19. See Dilliard, I., "The Emancipation Proclamation in the Perspective of Time," 23 Law In Transition 95-100 (1963) (quoted and excerpted in Bell, supra at pp. 52-55).

20. The substance of these and the following sections are taken from two previous articles: Jones, "The Genesis and Present Status of Affirmative Action in Employment: Economic, Legal, and Political Realities," 70 Iowa L. Rev. 901, 903 et. seq. (May 1985); and Jones, "'Reverse Discrimination' in Employment: Judicial Treatment of Affirmative Action Programs in the United States," 25 How. L.J. 217 (1982).

21. A comprehensive treatment of this is found in Schnapper, E., "Affirmative Action and the Legislative History of the Fourteenth Amendment," 71 Va. L. Rev. 753 (June 1985). The article is revised from the author's brief for the NAACP Legal

Defense and Education Fund Inc. as amicus curiae in Regents of the University of California v. Bakke, 438 U.S. 265 (1978).

22. See e.g. J. Baer, Equality Under the Constitution -- Reclaiming the Fourteenth Amendment (1983), particularly chapter 4 and references cited therein.

23. Baer, supra, at 75, citing J. Ten Broek, Equal Under the Law, (Rev. Ed. 1965).

24. For an extended discussion of the Freedmen's Bureau legislation see E. Schnapper, "Affirmative Action and the Legislative History of the Fourteenth Amendment," 71 Va. L. Rev. 753 (1985) at 780-783.

25. The foregoing is a paraphrase of materials taken from the brief of the NAACP Legal Defense and Education Fund Inc. as amicus curiae in the Bakke case. The exact quote is reprinted in Jones, "Affirmative Action," 70 Iowa L. Rev. 901, at 904.

26. See Adair v. United States, 208 U.S. 161 (1908); Cf. Lochner v. New York, 198 U.S. 45 (1905); and Coppage v. Kansas, 236 U.S. 1 (1915).

27. See Bolling v. Sharpe, 347 U.S. 497 (1954); subsequently, Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n.2 (1975); Schlesinger v. Ballard, 419 U.S. 498, 500 n.3 (1975); see also Karst, "The Fifth Amendment's Guarantee of Equal Protection," 55 N.C. L. Rev. 541 (1977); Schnapper, supra at p. 787.

28. See Schnapper, supra 71 Va. L. Rev. at 787 n.181.

29. Civil Rights Cases, 109 U.S. 3 (1883).

30. 163 U.S. 537 (1896).

31. See J. Franklin, "A History of Racial Segregation in the United States," 34 Annals of the American Academy of Political and Science 1, at 6-8 (March 1956).

32. Unemployment Relief Act of 1933, Chapter 17, § 1, 48 Stat. 22, 23 (1933).

33. Civilian Conservation Corps Act of 1937, Chapter 383, § 8, 50 Stat. 319, 320.

34. Civilian Pilot Training Act of 1939, Chapter 244, § 2, 53 Stat. 855, 856.

35. National Youth Administration Appropriation Act of 1941, Chapter 428, § 20, 54 Stat. 590, 593 (1940).

36. Nurses Training Act of 1943, Chapter 126, § 1, 57 Stat. 153.

37. Chapter 90, 48 Stat. 195.

38. 44 C.F.R. § 265.33 (1938); see also United States Commission on Civil Rights, Book No. 3, Employment 8 (1961).

39. 24 C.F.R. § 603.6 (1938) (prohibiting discrimination under the United States Housing Act of 1937, Chapter 896, 50

Stat. 888); see also Act of June 28, 1940, Chapter 440, § 201, 54 Stat. 681, 682 (current version at 42 U.S.C. § 1501 (1982)).

40. The PWA was created by Title II of the National Industrial Recovery Act of 1933, Chapter 90, 48 Stat. 195, 200.

41. For discussion of quotas under the PWA see Kruman, "Quotas for Blacks: The Public Works Administration and the Black Construction Worker," 16 Labor History 37 (1975); see also U.S. Commission on Civil Rights, Book No. 3, at 89-91.

42. Executive Order No. 8802 Preamble, 3 C.F.R. 957 (1938-43 comp., emphasis added).

43. The references to Nicholas Capaldi's assertion supra.

44. Capaldi, "Out of Order," supra p.2.

45. It is increasingly difficulty to give any real content to the liberal/conservative dichotomy. I mean to suggest here, however, that until very recently, at least, Mr. Nixon was considered to have impeccable conservative credentials.

46. President's Committee on Government Contracts, Pattern For Progress: Final Report to President Eisenhower (1960). See also 42 USC 2000(c), 8(d) and 2000(e)(15) (1964).

47. 3 C.F.R. 448 (1959-63 comp.), reprinted in 42 U.S.C. § 2000e (1982).

48. President's Committee on Government Contracts, supra at 14 (emphasis in original).

49. Transcript of Plans for Progress Celebration (1962) (on file U.S. Department of Labor).

50. 3 C.F.R. 339 (1964-65 comp.) reprinted in 42 U.S.C. 2000e (1982).

51. 26 Fed. Reg. 5184 (1961) (a proposed rule making).

52. See M. Sovern, Legal Restraints on Racial Discrimination (1966), pp. 109-110.

53. Sovern, supra pp. 116-117.

54. Sovern, supra p.140.

55. Sovern, supra 142.

56. Sovern, supra pp. 98-99.

57. Veterans' Preference Act of 1944, 58 Stat. 387 (1944), amending 31 U.S.C. 696, currently in scattered sections of 5 U.S.C. (1982 comp.); see in particular 5 U.S.C. § 2108 (1982 comp.).

58. 3 C.F.R. 339 (1964-65 comp.).

59. See Jones, "Federal Contract Compliance in Phase II -- The Dawning of the Age of Enforcement of Equal Opportunity Obligations," 4 Ga. L. Rev. 756 (1970).

60. See R.P. Nathan, Jobs and Civil Rights -- The Role of the Federal Government in Promoting Equal Opportunity in Employment and Training, prepared for the United States

Commission on Civil Rights by the Brookings Institution, Washington, D.C. (Clearinghouse Publication No. 16, April, 1969), pp. 101-107.

61. See Federal Civil Rights Enforcement Effort, A Report of the United States Commission on Civil Rights (1970) p.163 n.218.

62. Section 706(h) provides "The provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (29 U.S.C. 101-115), shall not apply with respect to civil actions brought under this section." Public Law 88-352, 78 Stat. 261.

63. Section 707(a)(3) of Title VII of the Civil Rights Act of 1964, 78 Stat. 261-262.

64. Jones, "The Transformation of Fair Employment Practices Policies," in Federal Policies and Workers Status Since the 30's 159, (J. Goldberg ed., 1976).

65. See Federal Civil Rights Enforcement Effort, 1970, *supra*, pp. 166-172; for a full discussion of this program see Jones, "The Bugaboo of Employment Quotas," 1970 Wis. L. Rev. 341; Leiken, "Preferential Treatment in the Skilled Building Trades: An Analysis of the Philadelphia Plan," 56 Cornell L.Q. 84 (1970); Comment, "The Philadelphia Plan: A Study in the Dynamics of Executive Power," 39 U. Chi. L. Rev. 723 (1972).

66. 48 Comp. Gen. 326 (1968); see also 47 Comp. Gen. 666 (1968) an earlier opinion in which the Comptroller General had held that there appeared to be a technical defect in bid specifications which included no statement of minimum standards of affirmative action required.

67. See Kruman, "Quotas for Blacks," *supra* at note 40.

68. For a fuller discussion see Jones, "The Genesis and Present Status of Affirmative Action in Employment: Economic, Legal, and Political Realities," 70 *Iowa L. Rev.* 901, 919-922.

69. See *Contractors Association of Eastern Pennsylvania v. Secretary of Labor*, 442 F.2d 159 (3rd Cir. 1971), cert. denied 404 U.S. 854 (1971).

70. See e.g. *Southern Illinois Builders Association v. Ogilvie*, 471 F.2d 680 (7th Cir. 1972); *Joyce v. McCrane*, 320 F. Supp. 1284 (N.J. 1970); *Weiner v. Cuyahoga Community College District*, 19 Ohio St. 2d 35; 249 N.E. 907; cert. denied, 396 U.S. 1004 (1970); *Rosetti Contracting Company v. Brennan*, 508 F.2d 1039 (7th Cir. 1975); *Northeast Construction Company v. Romney*, 485 F.2d 752 (D.C. Cir. 1973).

71. See *Regents of the University of California v. Bakke*, 438 U.S. 265 at 301-302 (opinion of Justice Powell).

72. 41 C.F.R. 60-2 (1971).

73. See *Hearings on the Philadelphia Plan and S. 931 Before the Subcommittee on Separation of Powers, Senate Committee on*

Judiciary, 91st Cong., 1st Sess. (1969); see also 115 Cong. Rec. 40906 (1969) and 115 Cong. Rec. 40749 (1969). For a full discussion of this congressional activity see Comment, 39 U. Chi. L. Rev. 723 (1972).

74. Section 718 of the Civil Rights Act of 1964 as amended, 42 U.S.C. 2000e.

75. 608 F.2d 1319 (9th Cir. 1979), cert. denied, 447 U.S. 921 (1981); see also U.S. v. New Orleans Public Service Inc., 553 F.2d 459 (5th Cir. 1977) vacated and remanded on other grounds 436 U.S. 942 (1978).

76. See Legal Aid Society v. Brennan, supra, n.14.

77. Associated General Contractors of Massachusetts Inc. v. Altshuler, 490 F.2d 9 (1st Cir. 1973), cert. denied, 416 U.S. 957 (1974).

78. Associated General Contractors of Massachusetts v. Altshuler, 490 F.2d 9 at 16-17 (1973).

79. ___ U.S. ___, 106 S. Ct. 58 (1985) (cert. granted); see also Vanguards of Cleveland v. The City of Cleveland, ___ U.S. ___, 106 S. Ct. 59 (1985) (cert. granted). In the Locals 28 and 638 of the Sheet Metal Workers case, the Court of Appeals reversed in part and affirmed in part the contempt findings of the District Court against the union for its failure to comply with the affirmative action obligations. Two (of the five) questions put to the Supreme Court are: (1) were the civil

contempt remedies imposed by the District Court illegally imposed without due process, and (2) was the appointment of an administrator for union affairs beyond the trial court's power? In Vanguards, the Court of Appeals affirmed the approval of a consent decree imposing modest goals for hiring and advancement of minority firefighters. The question to the Supreme Court concerning the court's power to grant relief is: Could the trial court approve consent decree provisions that it could not have ordered had the case gone to trial?

80. See e.g., Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971); McDaniel v. Barresi, 402 U.S. 39 (1971); North Carolina State Board of Education v. Swann, 402 U.S. 43 (1971).

81. 448 U.S. 448 (1980).

82. 448 U.S. 448 at 482 (1980) (opinion of Chief Justice Burger).

83. See Vol. 8A [Fair Empl. Prac. M.] Lab. Rel. Rep. (BNA).

84. L. Williams, "County Officials Urge U.S. to Keep Hiring Goals," New York Times, March 6, 1986.

85. I've discussed substantially the same matters as appear here in 70 Iowa L. Rev. 901, at 923.

86. 438 U.S. 265, at 301-302, n.40.

87. South Florida Chapter of the Associated General Contractors of America, Inc., et al. v. Metropolitan Dade County, Florida, 723 F.2d 846 (11th Cir., 1984).

88. Wygant et al. v. Jackson Board of Education, U.S. Supreme Court No. 18-1340, 122 Labor Relations Reporter, No. 5 (May 19, 1986).

89. ___ U.S. ___, 40 FEP Cases 1321 at 1329 (Sup. Ct. 1986) (J. O'Connor, concurring).

90. Wygant v. Board of Education, ___ U.S. ___, 40 FEP Cases 1321 at 1331 (Sup. Ct. 1986) (J. O'Connor, concurring) (emphasis in original).

91. Wygant v. Board of Education, ___ U.S. ___, 40 FEP Cases 1321 at 1326 (Sup. Ct. 1986).

92. See Vanguards of Cleveland v. The City of Cleveland, 753 F.2d 479 (6th Cir. 1985) cert. granted ___ U.S. ___, 106 S. Ct. 59 (1985) and EEOC v. Local 28 and 638 of the Sheet Metal Workers, 753 F.2d 1172 (2nd Cir. 1985) cert. granted ___ U.S. ___, 106 S. Ct. 58 (1985).

93. See e.g. Deveraux v. Geary, 765 F.2d 268 (1st Cir. 1985); U.S. v. City of Buffalo, 779 F.2d 881 (2nd Cir. 1985); Local 28, 638 v. EEOC, 753 F.2d 1172 (2nd Cir.) cert. granted 106 S. Ct. 58 (1985); Kromnick v. School District of Philadelphia, 739 F.2d 894 (3rd Cir. 1984), cert. denied, 105 S. Ct. 782 (1985); Grann v. City of Madison, 738 F.2d 786 (7th Cir. 1983),

cert. denied, 105 S. Ct. 296 (1984); Britton v. South Bend Community School Corporation, 775 F.2d 794 (7th Cir. 1985).

94. 422 U.S. 405 (1975).

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CHANGES IN THE LABOR MARKET STATUS OF BLACK WOMEN

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There is a temptation to use sweeping adjectives to describe the labor market status of black women. Terms like "dramatic improvement", "staggering gains", and even "convergence" have been used by researchers who have attempted to measure the distance between the status of black women in 1940 and the current labor market position of black women.

There is distance between 1940 and 1980. In 1940, the majority of black women worked as private household workers. In 1940, the very small number of black women who worked as professionals mostly worked as teachers. By 1980, black women worked in occupations (as architects, accountants, managers in the public and private sector, computer specialists and others) where they were previously completely unrepresented.

A review of the labor market data does not give a sense of "dramatic progress". Instead, the picture is a mixed one. Black women have experienced significant occupational improvements, even in the past decade. But black women are overrepresented in low-paying clerical and service jobs, but underrepresented in professional and managerial jobs. Further, black women experience disproportionately high unemployment rates, suggesting that many have not benefited from observed occupational improvements.

Discussions of "drastic change" overstate the case. It could be reported, for example, that the number of black women accountants increased by 400% betwween 1972 and 1982. Such a report ignores the fact that even after a fourfold increase in the number of black women accountants, black women represented fewer than 3% of the employed accountants in 1982. For virtually every occupation where reports could be made of "dramatic gains" in the employment of black women, there remained underrepresentation of black women in these occupations. In fact, there was drama in "gains" because initial employment levels were so low that a slight absolute increase in employment meant a large relative increase. The 400% increase in the number of black women accountants represented an increase from roughly 8,000 to 35,000 in 1982.

It is appropriate that those who formulate public policy focus on the status of black women; since black women have an increasingly important role in the black economy. Black women head more than 42% of black households and as household heads are repsonsible for the majority of black children. The median income for black married couple families was $23,418 in 1984, more than 50% higher than the median income for all black families (2). The black woman's economic role increases in importance as the labor market status of black men worsens. But despite increased importance, almost every labor market indicator would place black women as worse off than other race-sex groups. It is a challenge of public policy to improve this status.

This paper is organized in three sections. The first section reviews the current labor market status of black women; the second part discusses the role affirmative action and other factors have played in the development of current labor market status. The final section of this paper discusses policy measures that will improve the labor market status of black women.

I. THE LABOR MARKET STATUS OF BLACK WOMEN

A. OCCUPATIONAL STATUS

The greatest gains in the labor market status of black women have been gains in occupational status. As mentioned above, most of these gains have taken place as black women have left private houshehold employment and moved into other jobs. Black women moved into service jobs where the work they did was very similar to private household work (as cleaning, food and health service workers). Secondly, black women moved into "typically female" jobs wahre they were underrepresented. Black women with high school educations tended to move into clerical work and into retail sales, while black women who had college educations increased their numbers in teaching and nursing and other "typically female" professional jobs.

Table One shows how each of the four race-sex groups was distributed among the two-digit occupations in 1981. From this table it is clear that black women's occupational patterns are more similar to those of white women than to those of any other race-sex group. But black women differ from white women when proportional occupational representations are compared. There are proportionally fewer black female managers than any other race-sex group. Proportionally half as many black women as white women are employed as retail sales workers -- a pattern similar to the comparison between black and white men. The largest portion of black women workers are employed as clerical workers, as are the largest portion of white women, but black women lag behind white women in representation in this area. More black women then white work in non-white collar jobs -- the second highest concentration of black women is in service occupations, and a significant proportion of black women work as operatives and in private household work.

Black women's occupational similarity to white women is less indicative of occupational parity than it is illustrative of the impact of sex stratification on occupational attainment. While the gap between black and white women's occupational status at the two digit level is more narrow than that between black men and white men, there are clear parallels between black male and black female occupational status.

Black men are far less heavily represented in white collar and skilled blue collar jobs than are white men (ie, black male professional, managerial, sales, and crafts workers represent 38% of all black male workers, compared to almost 60% of all white male workers). Similarly, a greater number of black women work in non-white collar (though mostly traditionally female) jobs than do white women. About half of all black women work as operatives, private household workers, and service workers, while just 27% of all white women work in those occupations.

Table Two shows the percentage of women in typically female jobs by race and age for selected years. Black women have historically been more heavily represented in "traditionally female" jobs than have white women; and that black women are more likely to be represented in blue collar traditionally female jobs than are white women. Further, Table Two supports the earlier assertion that while white women (especially those under 35) are reducing their representation in typically female jobs, black women in the same age group are increasing their representation in these jobs. The increase in black women's representation in white collar, typically female jobs among 25-34 year olds means that black women in that age group were proportionally more heavily represented as clerical workers than were white women in the same age group.

The reduction in the representation of black women in traditionally female jobs ceased after 1977, while the reduction in the representeion of white women in such jobs continued to decline after 1977. White women experienced less stratification from the outset, and have left segregated jobs more rapidly than have black women. While the quality of work among black women changed, it changed because black women moved from one set of stratified jobs to another, not because they left "typically female jobs."

While data presented in Tables One and Two suggest similarities in the occupational status of white and black women, but clear differences emerge when occupational detail is examined. The Bureau of Labor Statistics collects data at the "one digit", or very general level; the "two digit", or more detailed level; and the "three-digit" level, which provides the most detail. A legal secretary will be classified that way only at the three digit level; at the two-digit level, she will be classified as a "secretary", and at the one digit level as a clerical or support worker. So when some it is reported that the proportion of black and white clerical workers is similar, differences in detailed occupational status are ignored. A legal secretary, for example, is likely to earn more than a typist. When more detailed data are reviewed, the fact that black women are concentrated in the lowest paying typically female jobs emerges.

The definition of "typically black female" occupations evolved from my review of three digit data, and the representation of back women in a range of jobs. In other words, while black women are about 5% of the total number of employed workers, they ae disproportionately represented in some service, clerical, and even professional occupations. If black women are either deliberately or traditionally "crowded" into a few low paying jobs (especially because their access is restricted to other jobs), they lower wages in those jobs where they cluster, and reduce competition (or increase wages) in the jobs where they ar excluded. This concept of black women's crowding explains, in part, why black women receive lower pay than white women in similar occupations.

"Typically black female" occupations are defined as those where black women's representation is more than twice their representation in the labor force. In service jobs, for example, black women are overrepresented by a factor of three or four (or, at three or four times their representation in the labor force) as chambermaids, welfare service aides, cleaners and nurse's aides. Forty-one percent of the black women who work in service occupations are employed in these four jobs. Similarly, nearly a quarter of all black women are concentrated in just six of 48 clerical occupations. They are overrepresented by a factor of four as file clerks, typists, teacher aides, keypunch operators, calculating machine operators, and social welfare clerical assistants.

Table Three illustrates the concept of "black women's crowding" by showing detailed occupation titles, median weekly women's pay, and the percent of black and white women in each occupation in 1981. Patterns of black and white women in service work differ somewhat. While black women are 5.4% of the total labor market, and 10.3% of service workers, black women are overrepresented by a factor of more than four as chambermaids, welfare service aides, and nursing aides. Fully a quarter of all nursing aides were black women in 1981.

Another significant number of black women (represented at three times the proportion of black women in the labor force) are represented as practical nurses, cleaning women, health aides, and boarders and keepers. Except for the practical nurses, whose wages are just over 125 percent of the poverty line, these women are either in or near poverty.

Black women are also overrepresented among child care workers, whose full time wage place them below the poverty line; food counter workers, who earn similarly low wages; cooks, whose wages are also below the poverty line, and hairdressers. In fact, 83.3% of the black women in service jobs worked in jobs defined as being crowded by black women in earlier work by this researcher (5). Sixty-nine percent of all black women in service jobs both experienced crowding and were employed in jobs where women's full time, full year pay, at less than $180 per week, was below the poverty level. (By comparison, 54.2% of white women service workers, a proportionally lower number than black women service workers, held "typically black female" service jobs and had low pay). Another 8.2% of black women service workers employed in "traditionally black female" service jobs earned weekly pay that, on a full time, full year basis, placed them at less than 125% of the poverty line. (For white women, the comparable number was 1.7%).

Table Three highlights differences between black and white women's occupational patterns. While white women are overrepresented as dental assistants, black women are just proportionately represented in this occupation. Full time pay for dental assistants is higher than that of nursing aids, a job where black women are heavily overrepresented. It is interesting to speculate on differences in institutional arrangements in the two occupations that result in such a difference. Similarly, black women are just proportionately represented as waiters, while white women are heavily overrepresented in this occupation. While pay in the food service industry is low, there are reasons this job may be attractive to black women. Again, questions of discrimination and entry barriers must considered.

Average full-time pay for female service workers, at $170 per week, indicates that most women in these occupations earns less than a poverty wage. From Table Three, we can calculate that 72.3% of black service women worked in jobs where median weekly pay was less than the $170 weekly average for service workers, compared to 69% of white service women.

Similar analysis can be done for black women in clerical, manufacturing, and other occupations; similar patterns emerge. In addition, part-time work is common in those occupations where black women are concentrated. Many women work part time for "economic reasons", officially defined as accepting part time work when full-time work is unavailable. For example, more than a third of all service workers are work part time. Sixteen percent work part time for economic reasons. The part-time characteristics of job black women tend to hold disadvantages them in the labor market. The official definition of "economic reasons" exclude other reasons that are also "economic": the paucity of child care, the unavailability of flexible schedules, or other reasons.

While "black women's crowding" is most pronounced at the lower end of the occupational spectrum, professional and managerial women are also disporportionately repreented in a set of occupations. Some of this crowding reflects the crowding that all women experience -- in teaching, nursing, social work, and personnel. But black women are more likely than white women to experience this crowding, even though both groups of women professionals were heavily concentrated in typically female jobs.

In 1972, 63% of all black women professionals worked as non-college teachers or nurses. A decade later, in 1982, 51% of black women held such jobs. The proportion of white women in non-college teaching and nursing dropped from 61% to 48% during the same decade.

A focus on professionals and managers raises questions about employment source for black women workers. Black women are more likely than others to be employed by federal, state, and local government. Table Four shows that the majority of black women in management (6), and a disproportionate number in clerical occupations, work for governments. A disproportionate number of black women professionals also work or governments.

From a discussion of black women's occupational status, it is clear that the improvement in the status of black women must be viewed with caution. Black women left private household work to enter other typicall female jobs, in clerical and service occupations. Sometimes their "crowding" is as pronounced as it was in private household work. Professional and managerial black women are also crowded into a few "typically female" jobs, and frequently work for the government. Disporoporionate government employment raises questions about efforts in the private sector to hire and promote black women. And while a small number of black women (fewer than 5% of the total number) work in "typically white male" jobs, they are underrepresented in those jobs.

B. UNEMPLOYMENT RATES

Black women's unemployment rates have, throughout the 1970's and 1980's, been twice as high as white women's unemployment rates. Although the ratio has shown some fluctuation, it has worsened since the mid-1970's. Black women's unemployment rates were double white women's rates between 1974-1979, but were 2.25 times as high as white rates between 1980 and 1985. (See Table Five for details).

While the unemployment ratio has worsened for all women since 1975, the largest gap occurs among young women, especially those under 34. Young black women are at a crossroads in terms of both their labor force participation and unemployment rates. Are these temporary or permanent situations? Will these young women have better luck in the labor market as they age? Because black women's employment status is in a state of transition, it is difficult to speculate.

What is most discouraging about the high unemployment rates among black women, especially those between 20 and 34, is the fact that these young black women have characteristics that are similar to those of young white women. In the past high black women's unemployment rates could be explained away by differences in education or occupation. But median years of education for young black and white women are similar (7). These young women, with high levels of education and a greater set of occupational options than their older sisters have had all of the "best" that white America has had to offer. They are the products of Ivy League educations, the beneficiaries of affirmative action programs. Why would post-adolescent black women, aged 25 to 34, have unemployment rates 2.4 times the rates of their white counterparts? Give educational and occupational similarities, other factors must be responsible for unemployment differences between black and white women.

A study based on 1975 data noted that differentials were reduced by about half when adjustments were made for differences in industry and occupation. That study found only slight reductions in unemployment differentials based on differences in age. Differences in education reduced the level of the difference between black and white unemployment rates by about 20%, but the explanatory power of education was stronger in 1960 than it was in 1975. Both institutional factors and barriers to entry (either into the general workforce or into specific occupations) were found to be important in explaining unemployment differentials (8). "Institutional factors" can include unionization, employer profits, and class of worker. If black women hold the same kind of jobs that white women do, but work in low-profit, nonunion jobs, this may explain unemployment differentials. If black women are more likely to work for the government than for private employers, this may also explain black women's high unemployment rates.

Reported unemployment rates of black women may actually be low estimates. The labor force is defined as those working or looking for work. "Looking for work" is defined as taking some formal action, like answering ads, mailing out resumes, or visiting employment agencies. Those who do not seek work, but would accept it if it were offered, are considered "discouraged workers", or people who have ceased to participate in the labor force because they are pessimistic about their ability to find work. If discouraged workers were counted in the labor force and among the unemployed, unemployment rates would be higher. Black women's unemployment rates would have grown the most in 1985, by more than 17%.

There are other reasons why the unemployment rate may be a low estimate of the actual unemployment problem. Those who are not in the labor force because of "home responsibilities" tend to be women. But if affordable child care were available, how many women would participate in the labor market? If even half of those women with home responsibilities who say they want jobs but are not in the labor force sought work and were unable to find it, women's unemployment rates would rise by between 12 and 15% (9).

Black women lose their jobs more quickly than do white women during recession. They also find jobs more slowly than black men, white men, and white women in periods of economic recovery. Black women's unemployment rates showed less cyclical sensitivity than the rates of black and white men, and unemployment rate improvement during recovery is more highly correlated with the length of recovery than unemployment rate improvement for other race-sex groups (10).

C. LABOR FORCE PARTICIPATION RATES

Labor Force Participation Rates. Labor force participation rates measure the percentage of the population in the labor force, those who are working or looking for work. Economists use labor force participation rates to measure labor supply, or to discuss people's willingness to work. Black women's strong attachment to the labor force has resulted in consistently high rates of labor force participation. Throughout the fifties and sixties, black women's labor force participation rates hovered below 50%, and first exceeded 50% in 1977.

Black women's labor force participation rates have historically been higher than those of white women. But the gap between black and white women's participation is closing. In 1960 there was a 12-point gap between the participation rates of black and white women. By 1985, as Table Six shows, the gap was less than 3 percentage points.

What happened between 1960 and 1985 to account for the closing of the participation gap? The rates of black women, already high, grew slowly through 1985. The rates of white women, which were lower, grew more quickly. Barbara Jones (11) writes that research on the labor force participation levels of women, especially married women, would lead us to expect somewhat more rapid growth in the particpaion rates of black women. But two factors may have led to an increase in the presence of white women in the labor market: the stagnation in white male wages, and the expansion of employment opportunities for typically female jobs. The increase in white women's employment has kept many a working-class white family out of poverty. And the expansion of clerical, elementary and secondary school teaching, and related jobs provided incentive (between 1970 and 1980) to enter the labor market for educated women, who are more likely to be white than black.

The attachment that black women have had to the labor force seems to have weakened among young (16-24 year old) black women. Black participation rates are more than twenty points lower than white participation rates among teens. This gap has grown since 1972, when it was about 16 points. Similarly, while more black than white women in the 20-24 year old category participated in the labor force in 1972, by 1979 there was a more than 10 point gap between black and white rates that has persisted (and widened even further) through 1985.

White women's labor force participation is highest for 20-24 year olds, while black participation rates are highest among 25-44 year olds. Jones notes that female work rates are in a state of transition, and suggests that some younger black women may experience higher work rates as they get older. And the structure of labor force participation shows a disturbing familiarity to historical patterns. In 1930, a cross sectional look at women's employment showed that both black and white employment was highest between ages

20 and 24. Black women over age 24 had slightly lower employment levels, but white women over age 24 had sharply lower employment levels. If patterns of marriage and childbearing were taken into consideration, white women exchanged the role of wife and mother for the role of worker, while black women added the responsibility as wife and mother to their role as worker.

While the labor force participation of women over age 25 may be rooted in black women's history, the low participation rates of 16-24 year old women is alarming, especially if these women's participation does not increase as they age. Part of the low participation of these young women may be due to labor market difficulties that young blacks face. The programs that, during the late 1970's, were designed to combat high levels of youth unemployment tended to focus on out-of-school and out-of-work young men, not young women. Thus labor force participation rates were lower for black women aged 16-19 than for any other group. Declining employment opportunities and increasing competition for unskilled jobs might partly explain why participation rates are so low.

D. OCCUPATIONAL STATUS, INCOME, AND UNEMPLOYMENT: SUMMARY EFFECTS

Income and earnings data suggest that some differences between black and white women are disappearing. The median weekly wage for black women who worked full-time in 1984 was $242, or 92% of the median weekly wage of $264 for white women (See Table Seven). Median income for black women (regardless of work status) was $6164 in 1984, 89% of the $6949 median income of white women (12).

Age and earnings data also suggest that younger black women have earnings that are very close to those of white women, and also closest to white males. Both the youngest black women (16-19) and the oldest (over 65) have the highest income ratio. But those women who are part of the "golden cohort", or the 25 to 34 year olds who had, in 1984, experienced more opportunities than older cohorts of black women, had earnings at 85% of the level of white women, among the lowest level of any of the cohorts.

High income ratios may be misleading. More black women than white have continuous work histories, but data on current income do not reflect prior work histories. So black women may achieve earnings "parity" because they work more than white women. If income ratios were adjusted for hours of work and for work histories, the "convergence" that so many have discussed might turn into a large income gap for black women. (13)

It is possible to make ironic comparisons from the inequities. The income of a black woman college graduate who works year-round and full-time is about the same as a white male high school dropout, and less than the income of a white male high school graduate. A white man with eight years of education earns more than a black woman with three years of college. Education has a positive effect on the earnings of black women; Table Eight shows that college graduates earn more than high school graduates who earn more than those with elementary school educations. But education does not shield black (or white) women from low earnings.

The income data speak to a "convergence" between black and white women. But more black women (15%) than white men (3%) or women (4%) have no source of income at all. Further, the earnings data reported are available only to those who have jobs. Persistent high unemployment rates, and falling labor force participation rates raise a key question: what good is wage convergence when so many are denied the opportunity to earn?

II. DETERMINANTS OF THE LABOR MARKET STATUS OF BLACK WOMEN

The previous section describes the current labor market status of black women and talks about ways it has changed in the past two decades. What has been responsible for these changes? The development of a model to quantify the determinants of the labor market status of black women is beyond the scope of this paper. However, there is some evidence to support the fact that the following factors have been important in shifting the labor market status of black women.

A. STRUCTURAL CHANGE IN THE EMPLOYMENT

Employment patterns have changed in our economy. While manufacturing jobs were important before 1960, they diminished in importance after 1960. Service jobs, clerical jobs, and jobs in the health industries have grown disproportionately in recent years.

Table Nine details information on structural shifts in the economy in the 1972-82 period. Data is used for this decade since occupational defintions are constant during this period. (After 1983, occupational definitions changed and classifications are not always directly comparable.) In absence of structural change in employment, growth for each occupation would be at about the level of employment growth. But employment grew by 21% in the decade. Professional employment grew more than twice as rapidly, by 48%, while clerical employment grew by 38%. On the other hand, the number of crafts jobs grew less slowly than total employment growth. Manufacturing (operative) employment fell by 9% (14).

The role of structural shifts in changing the employment status of black women is important. The first part of this paper implies that black women willfully left employment in private household work to seek other opportunities in the labor market. While black women have always attempted to escape private household work (as high levels of educational attainment relfect), structural changes in employment meant that black women were both "pushed" out of private household work, and "pulled" into alternate sources of employment. In fact, the increase in employment opportunities in the health industries has been partly a factor in the increased representation of black women, especially as nurse's aides.

While structural shifts may have improved the occupational status of black women, it is important to note that other structural shifts have been responsible for the deterioration in the relative unemployment position of black women, especially young black women. As white women have entered the labor market in large numbers, it is possible that black women who compete with them for low skilled jobs are the losers. (This may especially be true in inner cities where fast-food vendors and others have stated a preference for hiring middle-aged women instead of youth). Further, some of the light manufacturing jobs that black women have been concentrated in have disappeared wih the emergence of the global assembly line. In any case, as noted in the previous section, the ratio of black-white unemployment among women has risen in recent years.

B. AFFIRMATIVE ACTION

The passage of the Civil Rights Act, in 1964, made "non-discrimination" an employment policy, although past policy had clearly allowed discrimination. "Affirmative action" went a step beyond employment policy to require employers and educational institutions to make tangible attempts to equalize the status of minorities in an attempt to redress the effects of past discrimination. Affirmative action is a necessary policy because removing legal discrimination does little to change the status of a people who had, until 1964, very limited access to educational institutions, and to a full range of occupational opportunities.

Researchers are not unanimous in attributing changes in black labor market status to affirmative action, noting the role that other factors play in the improvement of black occupational status. Leonard cites four studies that showed that affirmative action did not increase black employment in skilled occupations. But Leonard's work shows that affirmative action is effected in increasing black employment in skilled occupaions in the late 1970's (15).

While modelling to confirm the effects of affirmative action in the workplace and in education are beyond the scope of this paper, this section presents some data and observations to support the notion that affirmative action has, indeed, been effective in improving the occupational status of black women.

1. Affirmative Action and "the Pipeline".

Prior to 1960, most black Americans were educated at traditionally black colleges and universities. Their educations were tailored for their entry into a small range of occupations: teaching and nursing for women, teaching, law, and medicine for men. In addition, a significant number of blacks worked for the government, as postal clerks and mail carriers, as social workers, and in other occupations.

The Civil Rights Act, and affirmative action, opened the door of white universities for black Americans. This did not necessarily improve the quality of the black labor pool, but it did make new options available for black Americans. As students majored in different fields, their career options opened. In addition black students had greater access to professional schools at majority universities. Black enrollments increased in law and medical schools, in business schools, and in doctoral programs.

The educational "pipeline" plays a major role in determining the number of blacks in the labor pool for certain jobs, especially since it is not a goal of affirmative action to place "unqualified" blacks in jobs. Instead the goal has been to make a major effort to find qualified blacks. Affirmative action in education, then, is an important part of the effort to move toward equity in the workplace.

Table Ten shows information on law school enrollments between 1971 and 1985 (data were not available before 1971). Total enrollments rose by 31% during this period, but black enrollments increased by 62%. Blacks are still underrepresented among law students, but their proportion has increased slightly in 15 years. Progress has not been even -- black enrollments have declined in some years, and enrollments have not increased as much in recent years as they did in the early 1970's.

Patterns of enrollments in other programs reflect those revealed in Table Ten. Enrollments in graduate and undergraduate programs was greatest in the early 1970's, but slowed toward the end of that decade and into the 1980's. The proportion of blacks enrolled in undergraduate programs peaked in 1978, and then dropped. And inequities remain -- more blacks than whites are enrolled in two-year programs. Enrollment data, furthermore, reveal only partial information about black educational status. Information on retention, and on program completion still reveal racial differences.

Anecdotal accounts suggest that affirmative action is not always enforced in academia, either in recruitment, enrollment, or in faculty hiring. The Bakke decision, some note, may have had a "chilling effect" on affirmative action in admissions (16). In the 1980's, with scarce funds for financial aid, black students may find matriculation more difficult than it was a decade ago. Yet, the role that educational insitutuions play in preparing blacks for the labor market is an important one. It is difficult to predict improvements in the status of black women in the labor force without examining the state of the "pipeline".

2. Affirmative Action in Employment

The improved occupational status of black women is a direct result of affirmative action. While it can certainly be argued that black women have reached parity with others in few fields, one need only contrast the status of black women in 1960 with that in 1985 to major differences in the status of black women, especially at the top of the occupational spectrum.

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(16) See Bakke, Weber, and Affirmative Action (Rockefeller Foundation Working Paper, December, 1979) for an early discussion of the effects of the Bakke decision.

Almost two thirds of black women professionals were teachers or nurses in 1972. A decade later, though the majority of black women professionals were teachers or nurses, nearly 49% were employed in other professional occupations. In law, medicine, accounting, engineering, and other professional occupations, the proportion of black women grew rapidly between 1972 and 1982.

Between 1972 and 1982, total professional employment grew by 47%, from 11.5 million to 17 million. Black professional employment grew, during the same period, by 70.3%. Black women's professional employment grew by 82.2%. Part of this employment can be attributed to structural change. But part must be attributed to efforts to hire black women in professional jobs. (16)

Occupational shifts among adults also provide some evidence that affirmative action played a role in improving the occupational status of black women. In 1966, for example, 12.4 percent of 25 to 34 year old black women were employed in professional jobs; by 1977 the number for them (now 35 to 44 year olds) was 18.8 percent. There were not similar shifts in the occupational status of the total population, indicating some incentives for black women to shift into professional employment.

A survey of corporate affirmative action programs provides some information on incentives provided for black women to upgrade occupationally. In one instance, math teachers were recruited to do training and then fill acounting and auditing positions. In another instances, black female clerical workers with seniority were able to move into lower-level management positions after taking courses on work time, and participating in company sponsored training. Many companies designed programs to upgrade their current workforce, and also to attract new black employees to their ranks. These programs may be few, and may have been available only during the early 1970's, but it is clear that their existence had a positive effect on the status of black women.

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(16) The comparisons stop at 1982 because methods of occupational classification changed after 1982, and categories are not strictly comparable.

Black women at the top end of the occupational spectrum are not the only beneficiaries of affirmative action programs. Clerical employment grew by 30% between 1972 and 1982. Black women's clerical employment grew more rapidly, by 75%, during tht time period. Part of this growth may have been a result of the "pipeline" and an increased number of black women who had clerical training. But affirmative action programs may have also made more clerical opportunities available to black women.

Minority set-aside programs can also be seen as a version of affirmative action programs. While black women have undoubtedly been the beneficiaries of these programs, it is difficult to gather data on the number of black women business owners, especially since there are either minority business initiatives and women's business initiatives (but no initiatives specifically focused on black women owners). Still, the number of self-employed black women, a proxy for small business ownership, has increased rapidly in the last five years.

In any case, shifts in the occupational status of black women, especially the increase in the professional and managerial status of black women, are a result of stuctural change, the increase in the number of educated black women, and the effect of affirmative action programs. There may be too little affirmative action, and black women may not have attained equity in labor markets. But affirmative action enforcement has played some part (which is not quantified here) in this progress.

C. THE POLITICAL/ECONOMIC CLIMATE

It is perhaps useful to distinguish between the effects of affirmative action programs and the effects of an affirmative action "climate". When affirmative action programs are enforced, then there is a perception on the part of blacks that there are more opportunities for employment. Many companies may not have instituted affirmative action programs, but exhibited more openness to affirmative action hiring because of the "climate". The increase of black women's representation in jobs where they had been underrepresented is as much the result of affirmative action programs as an affirmative action climate.

The period after the passage of the Civil Rights Act was a period of political and economic flux. Tradition was questioned. The role of women, the role of minorities, and other roles were questioned. Educational research established the fact that "role models" were necessary to motivate youngsters to aspire to non-traditional roles. The period was a time of tremendous, visible change.

The concept of "visible" change is contrasted with the concept of social change, because there has been a dynamic of tokenism that has made change available to the many, not the few. But the concept of visible change is important in that it affects the aspirations of the black population. To the extent that the 1960-1980 period raised questions about black roles, and black women's roles, and to the extent that the climate in this period and awareness of black women's "firsts" has altered black women's perceptions of their employment possibilities.

III. POLICIES TO IMPROVE THE LABOR MARKET STATUS OF BLACK WOMEN

Thus far, this paper has described the labor market status of black women, and indicated that black women are last when their status is compared to others. Still, the status of black women has improved. Structural changes in employment, affirmative action, and increased education have all been factors in improving the labor market status of black women. There has been progress, but there is much more to be done to close the labor market gap between black women and others. Policy initiatives that improve the labor market status of black women are discussed below.

A. RECOMMITMENT TO, AND ENFORCEMENT OF, AFFIRMATIVE ACTION

Affirmative action is important in improving the labor market status of black women. But if black women are to attain equity, then affirmative action initiatives must be strengthened and enforced. Whether affirmative action efforts are described as "quotas" or "goals and timetables", it must address the underrepresentation of black women in professional and managerial jobs, and as students in instiutions of higher education.

This paper has focused on aggregate data, but attention should be paid to the affirmative action programs developed by individual companies. Aggregate data can be misleading, especially since it focuses on occupational title, and not a position in the occupational hierarchy. Do affirmative action programs extend to promotions? To subcontracting? To advertising and distribution? If the commitment to affirmative action is a sincere one, then methods to address underrepresentation in every facet of the economy are important.

It is also clear that affirmative action policies seem to be most helpful to black women at the upper end of the employment spectrum. Thus, the development of employment and training opportunities should be seen as part of affirmative action initiatives, so that black women are better equipped to compete in the job market. And, the private sector must be convinced to develop innovative programs that move black women toward equity. Still, affirmative action may not be the only policy to address the high unemployment rates and low pay levels of some black women.

There remains an enormous agenda if equity is to be implemented in education. The drop in the proportion of black college enrollment is alarming. Continued recruitment, support services, and financial aid for college students are facets of affirmative action policy. Some research suggests that state, as well as federal government, must renew commitment to affirmative action if opportunities are to remain available to black students.

While the courts have supported affirmative action in hiring and sometimes in promotions, recent cases have not upheld affirmative action when there are layoffs. But without affirmative action in layoffs, gains are very frail, especially in periods of economic retrenchment. Black women are especially vulnerable because so many work for governments. The Supreme Court, in Wygant v. Jackson Board of Education, ignored this when it ruled that the policy of laying off white teachers before minority teachers with less seniority is unconstitutional.

The enforcement of affirmative action, and perception of enforcement, is as important as efforts to expand the scope of affirmative action. Resources must be made available to enforce affirmative action. Cases must be heard more quickly. If affirmative action policies are enforced, the "climate" must be receptive to affirmative action.

Comparable worth policies should be seen as a subset of affirmative action policies. Women, and especially black women, are concentrated in jobs where they are underpaid. The implementation of comparable worth improves the wages of black women, especially those employed in clerical jobs in the public sector (18).

B. BEYOND AFFIRMATIVE ACTION: A LEGISLATIVE AGENDA TO IMPROVE THE STATUS OF BLACK WOMEN

Strategies to improve the status of workers have had two foci. Supply-side strategies focus on the status of workers and attempt to improve a worker's human capital. Access to education, training programs, and employment assistance are all part of these supply-side programs. These programs are successful for some workers. The best workers, most likely to succeed, are "creamed" from the program and easily placed. Supply-side strategies, while important, may be most effective for young workers, especially when results are promised.

Since supply side strategies have limited success potential, it is important to deal with demand side strategies. These strategies look at the institutional basis of the labor market, and attempt to change inequities in the labor market by changing the institutuions that determine the terms and conditions of work through litigation, organization, legislation, and evaluation. Comparable worth (or equal pay for jobs of equal value) can be considered an institutional strategy because it attempts to change the way pay is determined. Legislation and policy change to facilitate unionization, especially of low-wage black women, is also an institutional policy. The question of employment source is also an institutional question. Why do so many black women managers work for governments? Why do so many low-wage black women find their jobs subcontracted from the public sector to private employers? (19) How available is child care, and how does child care availability improve the labor market prospects for black women, especially poor black women?

IV. CONCLUSIONS

Because black women have crowded the "bottom" of the labor market, and are least in terms of economic status, our efforts to shape public policy to improve the status of these women must necessarily view the "bottom". Must there be a "bottom", or how fully can our economy guarantee decent wages, hours, and working conditions to all workers? If black women do not occupy this "bottom" then who will? Answers to these questions necessarily address te structure of the economy and the position of black people in an economy that generates inequality.

Meanwhile, this paper offers partial solutions. By examining the status of black women, and discussing reasons for this status this paper makes it clear that some monitoring of existing affirmative action programs, and intervention to ensure quasi-equitable outcomes are necessary as long as black women experience the residual effects of past discrimination. In addition enforcement of affirmative action will be necessary until both past and present discrimintion, and data that describe "underrepresentation" are a memory, not a matter of current importance.

NOTES

(1) These numbers come from unpublished Bureau of Labor Statusitics data. Because the population size is so small (BLS does not report cells that are smaller than 75,000), the numbers mentioned are estimates. Incidentally, though there were more than five million black women in the labor force, black women's representation was below 75,000 (or about 1.3%) in a number of professional and managerial occupations.

(2) See US Bureau of the Cewnaus, Current Population Reports, Series P60, No. 149, Money Income and Poverty Status of Families and Persons in the United States: 1984. White married couple families have higher incomes than white families, but married couple families have median incoems that are less than 9% higher than white median incomes.

(3) The designation "trypically female" applies to occupations where women are overrepresented. Women are about 40% of the labor force but are more than 95% of secretaries and bank tellers and more than 70/% of elementary and secondary school teachers.

(4) See Julianne Malveaux, "Similarities and Differences in the Economic Interests of Black and White Women", Review of Black Political Economy, Summer, 1985 and "Low Wage Black Women: Occupational Descriptions, Strategies for Change, unpublished paper, NAACP Legal Defense and Education Fund, 1984, for more detailed discussion of the concept of "black women's crowding".

(5) See Julianne Malveaux, "Rcent Trends in Occupational Segregation by Race and Sex", presented May, 1982, to the Committee on Women's Employment and Related Social Issues, National Academy of Sciences, for more information.

(6) The strict defintion of "management" is used in this table, as opposed to a broad definition of "management and management related" workers. Thus, in three digit occupations, occupations specifically designated "manager" are includedin this analysis.

(7) Black women 20-24 had 12.1 median yheers of education in 1981; those 25 to 29 had 12.6 years of education. White women in these age groups he 12.8 years of education. See US Deaprment fo Commerce, Bureau of the Census, "Educational Attinment in the United States: March 1980 and 10981", Current Populatin Reports, Series P-20, No. 390, (Washington, D.C. Government Printing Office, Table One, Page 9.

(8) Julianne Malveaux, Unemployment Differentials by Race and Occupation, unpublished Ph.D. dissertation, Massachusetts Institute of Technology, 1980

(9) Julianne Malveaux, No Images: Contemporary Black Women in the Labor Force, manuscript in progress.

(10) See Malveaux, No Images. Also, Malveaux, "Black Women's Employment in Recession and Recovery", unpublished paper, AEA meetings, December 1985.

(11) Barbara Jones, "Black Women and Labor Force Participation: An Analysis of Sluggish Growth Rates", Review of Black Political Economy, Winter, 1986.

(12) Median yearly income is reported in US Department of Commerce, Bureau of the Census, "Money Income and Poverty Status of Families and Persons in the United States: 1984" Current Populations Reports, Series P-60, No. 149 (Washington, D.C.: Government Printing Office. 1985). Table 7, page 14.

(13) Allan King, "Labor Market Racial Discrimination Against Black Women", 8, No.4, Review of Black Political Economy. Summer, 1978.

(14) See unpublished data, Bureau of Labor Statistics, Table One, 1972, 1982.

(15) Jonathan Leonard, "Employment and Occupational Advance Under Affirmative Action", National Bureau of Economic Research, Working Paper No. 1270

(16) The comparisons stop at 1982 because methods of occupational classification changed after 1982, and categories are not strictly comparable.

(17) Scott Jaschik, "States Called Key to College Gains for Minorities", Chronicle of Higher Education, July 23, 1986

(18) For discussion see Julianne Malveaux "Comparable Worth and Its Impact on Black Women" in Margaret Simms and Julianne Malveaux (eds.) Slipping Through The Cracks: The Status of Black Women (New Brunswick: Transactions Publications, 1986)

(19) See Institute for the Study of Labor and Economic Crisis. GOVERNMENT FOR PROFIT: THE CASE AGAINST CONTRACTING OUT. ISLEC Occasional Paper #1. San Francisco, 1981; There is further discussion of this issue in Julianne Malveaux, Low Wage Black Women: Occupational Descriptions, Strategies for Change. New York: NAACP Legal Defense and Education Fund, 1984.

TABLE ONE
OCCUPATIONAL DISTRIBUTION OF WORKERS
BY RACE-SEX GROUP
1981

	Black Women	White Women	Black Men	White Men
Professional, Technical and Kindred Workers	15.4%	17.3%	11.7%	16.3%
Engineers	0.1	0.2	1.5	2.7
Physicians, Dentists	0.4	0.3	1.0	1.3
Other Health Professionals	4.4	4.7	0.9	0.5
Noncollege Teachers	4.7	5.4	1.1	1.7
Engineering and Science Technicians	0.5	0.5	1.3	1.6
Other Salaried	5.1	5.8	5.6	7.5
Other Self-Employed	0.2	0.5	0.7	1.0
Managerial and Administrative	4.1	7.8	7.0	15.5
Salaried Manufacturing	0.2	0.6	0.5	2.6
Salaried, other industries	3.3	6.0	5.0	10.3
Self-employed, retail	0.4	0.8	0.7	1.7
Self-employed, other				
Sales	3.2	7.3	2.7	6.5
Retail	2.5	5.2	1.4	2.2
Other	0.7	2.1	1.3	4.4
Clerical	29.5	35.5	8.2	6.1
Bookkeeper	1.9	4.5	0.3	0.3
Office Machine Operator	2.2	1.6	0.7	0.4
Secretaries	8.2	12.0	0.3	0.1
Other Clerical	17.3	17.5	6.9	5.3
Craft	1.5	2.0	16.4	21.2
Carpenter	*	0.1	1.0	2.0
Other Construction	0.1	0.1	4.3	4.4
Foremen	0.4	0.5	2.0	2.9
Machine Jobsetters	0.1	0.1	0.8	1.2
Other Metal Workers	0.1	0.1	0.7	1.1
Auto Mechanics	*	*	1.8	2.2
Other Mechanics	0.1	0.1	2.8	3.8
Other Craft	*	1.0	3.0	3.4

TABLE ONE CONTINUED
OCCUPATIONAL DISTRIBUTION OF WORKERS

	Black Women	White Women	Black Men	White Men
Operatives, except Transport	14.2	9.1	15.0	10.6
Mine Workers	*	*	0.3	0.6
Motor Vehicle Equipment	*	0.2	1.2	0.6
Other Durable Manufacturing	4.1	3.4	6.3	4.5
Non-Durable Manufacturing	7.2	4.1	4.0	2.3
Other Operatives	2.5	1.4	3.3	2.6
Transport Equipment Operatives	0.7	0.7	8.6	5.2
Driver Deliverers	0.6	0.7	6.9	4.4
Others	0.1	0.1	1.6	0.7
Nonfarm Laborers	1.3	1.2	11.5	6.5
Construction	*	*	2.1	1.3
Manufacturing	0.5	0.3	2.5	1.3
All Other	0.8	0.9	6.9	3.9
Private Household Workers	6.0	1.8	0.2	0.1
Service Workers	23.6	16.1	16.2	8.0
Cleaning	5.6	1.8	6.7	2.2
Food	6.8	7.3	4.3	2.6
Health	7.4	3.7	1.2	0.3
Personal	3.3	3.1	1.1	0.7
Protective	0.5	0.3	2.9	2.2
Farmers and Farm Managers	0.1	*	0.1	2.5
Farm Laborers	*	0.8	2.1	1.6

* less that 0.05%

Source: Unpublished data, Bureau of Labor Statistics, 1981
from Current Population Surveys, annual averages

TABLE TWO
PERCENTAGE OF WOMEN IN TYPICALLY FEMALE• JOBS BY RACE AND AGE FOR SELECTED YEARS

	1968	1977	1981	% reduction 68-81	Age grp chg 68-77
WHITE WOMEN	77.7	74.7	72.4	6.8%	
White collar	52.1	50.5	50.7	0.8%	
Blue collar	25.6	24.2	21.7	15.2%	
25-34	78.2	73.7	69.8	10.7%	
White collar	56.5	54.4	52.2	7.6%	
Blue collar	21.7	19.3	17.6	18.9%	
35-44	73.8	72.9	68.7	6.9%	6.8%
White collar	50.7	52.1	50.7	0%	
Blue collar	23.8	20.8	18.0	24.4%	
45-54	73.8	71.2	70.1	5.0%	3.5%
White collar	48.0	50.1	49.7	3.5%	
Blue collar	25.8	21.1	20.4	20.9%	
55-64		72.8	71.1		1.4%
White collar		46.9	47.7		
Blue collar		25.9	23.4		
BLACK WOMEN	81.7	77.4	77.4	5.3%	
White collar	27.0	34.5	41.0	-51.9%	
Blue collar	54.7	42.9	36.4	33.4%	
25-34	79.0	77.4	74.6	5.6%	
White collar	33.1	47.1	59.1	-78.5%	3.5%
Blue collar	45.9	30.3	25.5	44.4%	
35-44	78.8	76.2	74.7	5.2%	
White collar	23.0	33.4	39.4	-79.3%	-.1%
Blue collar	55.8	42.3	35.5	28.1%	
45-54	81.9	78.9	77.7	5.1%	
White collar	17.4	26.8	31.2	-79.[illegible]%	-1.5%
Blue collar	64.5	51.1	46.4	28.1%	
55-64		83.1	80.2		
White collar		17.3	22.9		
Blue collar		65.8	57.3		

Source: Unpublished data, Bureau of Labor Statistics, 1981 from Current Population Surveys, annual averages

TABLE TWO

NOTE

Typically female jobs are defined as "other" health professionals, noncollege teachers, retail sales workers, clericial workers, nondurable goods manufacturers, private household workers, and service workers except protective service workers. "White collar" typically female jobs are health professionals, noncollege teachers, retail sales workers and clerical workers. The remainder are blue "typically female" jobs.

TABLE THREE
PERCENT OF WOMEN IN SERVICE OCCUPATIONS
BY RACE
1981

	Percent Black Women	Percent White Women	Number Black Women	Median Womens Pay
TOTAL LABOR FORCE	5.4	37.5	5303	$224
SERVICE WORKERS	10.4	48.9	1257	170
Chambermaids	36.6	60.0	64	141
Welfare Service Aides	27.9	60.5	24	182
Nursing Aides	23.8	62.8	266	167
Practical Nurses	18.5	79.2	73	227
Boarding Keepers	18.2	72.7	2	235
Cleaners	17.0	38.5	159	168
Health Aides	16.4	67.8	50	201
Other Health Service	15.6	57.8	84	160
School Monitors	13.9	83.3	5	167
Child Care Workers	82.7	13.4	56	145
Elevator Operators	12.5	6.3	2	260
Health Trainees	12.5	62.5	1	252
Personal Service Attendants	11.3	46.4	11	211
Food Counter Worker	10.7	72.3	49	149
Housekeepers	10.5	59.4	14	205
Cooks	9.9	42.4	135	148
Crossing Guards	8.9	53.3	4	183
Hairdressers	8.7	80.9	49	172
Airline Stewardesses	7.9	79.1	3	396
Ushers	5.9	29.4	1	147
Dental Assistants	5.8	92.1	8	182
Janitors	5.4	13.6	72	188
Waiters	5.1	84.6	73	144
Dishwashers	4.0	24.5	10	132
Barbers	3.8	13.2	4	209
Busboys	3.2	16.1	7	138
Guards/Watchers	3.1	10.6	18	214
Recreation Attendants	1.7	44.4	3	173
Bartenders	1.3	46.0	4	179
Police	1.0	4.6	5	255
Lay Midwives	*	100.0	**	424
Firefighters	*	0.9	**	311
Sheriffs	*	7.2	**	308
Baggage Handlers	*	*	**	174

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*- less than 0.05
** - less than 1,000 workers
Number of Workers in Thousands

Source: Unpublished Data, Bureau of Labor Statistics

TABLE FIVE

UNEMPLOYMENT RATES BY AGE, RACE AND SEX 1970-1986

	16 to 19				20 to 24			
	Black Women	Black Men	White Women	White Men	Black Women	Black Men	White Women	White Men
1985	39.2	41.0	47.1	49.9	25.6	23.5	8.5	9.7
1984	42.6	42.7	15.2	16.8	25.6	26.6	8.8	9.8
1983	48.2	48.8	18.3	20.2	31.8	10.3	13.8	
1982	47.1	48.9	19.2	21.7	29.6	31.5	10.9	14.3
1981	42.2	40.7	16.6	17.9	26.4	26.4	9.1	11.6
1980	39.8	37.5	14.8	16.2	23.5	23.7	8.5	11.1
1979	39.1	34.2	14.0	13.9	22.6	18.7	7.8	7.4
1978	40.8	36.7	14.4	13.5	22.7	21.0	8.3	7.6
1977	43.4	39.2	15.9	15.0	25.5	23.0	9.3	9.3
1976	41.6	37.1	16.4	17.3	22.8	22.6	10.4	10.9
1975	41.0	38.1	17.4	18.3	24.3	24.7	11.2	13.2
1974	37.4	33.1	14.5	13.5	19.1	16.2	8.2	7.8
1973	36.1	27.8	13.0	12.3	18.4	13.2	7.0	6.5
1972	40.5	31.7	14.2	14.2	17.9	14.9	8.2	8.5
1971*	35.5	28.9	15.2	15.1	17.3	16.2	8.5	9.4
1970*	34.4	24.9	13.3	13.7	15.0	12.6	6.9	7.8

	25 to 34				35 to 44			
	Black Women	Black Men	White Women	White Men	Black Women	Black Men	White Women	White Men
1985	15.1	13.8	6.2	5.7	9.3	9.6	4.9	4.3
1984	15.4	15.0	6.1	6.2	9.4	10.4	5.0	4.6
1983	18.6	19.4	7.6	9.0	11.4	13.5	6.2	6.4
1982	17.8	20.1	8.0	8.9	10.7	13.4	6.4	6.2
1981	14.9	14.4	6.6	6.1	9.8	9.3	5.1	4.0
1980	13.2	13.4	6.3	5.9	8.2	8.2	4.9	3.6
1979	12.1	9.6	5.6	3.6	7.2	6.3	4.2	2.5
1978	11.9	9.8	5.8	3.7	7.8	5.1	4.5	2.5
1977	13.6	11.8	6.7	5.0	8.7	6.2	5.3	3.1
1976	13.6	12.0	7.6	5.6	8.5	7.5	5.3	3.7
1975	13.4	12.7	8.5	6.3	9.0	8.7	6.6	4.5
1974	9.0	8.1	5.7	3.5	6.6	4.3	4.3	2.4
1973	10.3	6.2	5.1	3.0	5.6	3.9	3.7	1.8
1972	10.5	7.2	5.5	3.4	7.6	4.8	4.5	2.5
1971	10.7	7.4	6.3	4.0	6.9	4.9	4.9	2.9
1970	7.9	6.1	5.3	3.1	4.8	3.9	4.3	2.3

TABLE FIVE (continued)

UNEMPLOYMENT RATES BY AGE, RACE AND SEX 1970-1986 (CONT)

	45 to 54				55 to 64			
	Black Women	Black Men	White Women	White Men	Black Women	Black Men	White Women	White Men
1985	6.8	9.7	4.5	4.1	6.0	7.9	4.1	4.0
1984	8.6	7.9	4 8	4.2	5.9	8.9	4.0	4.7
1983	9.9	11 4	5.5	5.7	7.3	11.0	4.7	5.6
1982	8.5	9.0	5.5	5.3	6.1	10.3	5.0	5.1
1981	6.9	7.8	4.2	3.6	4.7	6.1	3.7	3.4
1980	6.4	7.2	4.3	3.3	4.5	6.2	3.1	3.1
1979	5.2	5.2	3.7	2.5	4.7	5.1	3.0	2.5
1978	5.6	4.9	3.8	2.5	5.2	4.4	3.0	2.6
1977	5.8	4.9	5.0	3.0	4.8	6.0	4.4	3.3
1976	5.9	7.3	5.0	3.7	5.4	6.3	4.8	4.0
1975	7.0	9.3	5.8	4.4	5.3	6.3	5.1	4.1
1974	4.4	4.2	3.6	2.2	3.6	3.6	3.3	2.5
1973	3.9	3.2	3.1	2.0	3.3	3.2	2.8	2.4
1972	4.6	3.8	3.5	2 5	3.7	4.4	3.3	3.0
1971	4.2	4.5	3.9	2.8	3.5	4.7	3.3	3.2
1970	4.0	3.3	3.4	2.3	3.2	3.4	2.6	2.7

	65 and over			
	Black Women	Black Men	White Women	White Men
1985	5.2	8.9	3.1	2.7
1984	4.9	7.9	3.7	2.6
1983	6.3	11.8	3.1	3.2
1982	4.5	9.3	3.1	3.2
1981	6.0	7.5	3.4	2.4
1980	5.0	8.7	3.0	2.5
1979	4.0	6.4	3.1	3.1
1978	4.8	6.6	3.7	3.9
1977	3.5	7.8	4.9	4 9
1976	3.4	8.7	5.3	4.8
1975	3.7	8.7	5.3	5.0
1974	2.0	5.3	3.9	3.0
1973	3.8	3.3	2.8	2.9
1972	2.6	5.4	3.7	3.3
1971	3.9	3.4	3.6	3.4
1970	1.9	3.8	3.3	3.2

* 1970 and 1971 data for blacks includes other minorities.
Sources: Employment and Earnings, January 1986, 1985,1972,1971 and
Handbook of Labor Statistics, December 1983.

TABLE SIX

LABOR FORCE PARTICIPATION RATES BY AGE, RACE AND SEX 1970-1986

	16 to 19				20 to 24			
	Black Women	Black Men	White Women	White Men	Black Women	Black Men	White Women	White Men
1985	37.9	44.6	55.2	59.7	62.5	79.0	73.8	86.4
1984	35.0	41.7	55.4	59.0	60.7	79.1	72.5	86.5
1983	33.0	39.9	54.5	59.4	59.1	79.4	72.1	86.1
1982	33.5	39.7	55.0	60.0	60.1	78.7	71.8	86.3
1981	34.0	41.6	55.4	62.4	61.1	79.2	71.5	87.0
1980	34.9	43.2	57.4	63.7	60.4	79.8	70.5	87.2
1979	36.8	46.3	57.4	64.8	61.6	80.6	70.5	86.7
1978	37.3	44.9	56.7	65.0	62.8	78.8	69.3	87.2
1977	32.9	43.2	54.5	64.0	59.5	79.3	67.7	86.8
1976	32.9	41.3	52.6	62.3	57.1	79.1	66.2	86.2
1975	34.2	42.6	51.5	61.9	56.0	78.8	65.4	85.5
1974	33.4	46.7	51.7	62.9	58.8	83.5	63.8	86.5
1973	34.2	45.7	50.1	62.0	58.1	83.7	61.6	85.8
1972	32.2	46.3	48.1	60.1	57.1	82.6	59.4	84.3
1971*	31.2	43.0	45.3	55.4	55.9	70.4	58.0	69.7
1970*	34.0	45.6	45.5	54.3	57.5	70.5	57.8	66.5

	25 to 34				35 to 44			
	Black Women	Black Men	White Women	White Men	Black Women	Black Men	White Women	White Men
1985	72.4	88.8	70.9	95.7	74.8	89.8	71.4	95.7
1984	71.5	88.9	69.8	95.4	73.7	90.0	61.6	96.1
1983	72.3	89.0	68.7	95.2	72.6	89.7	68.2	96.0
1982	70.2	89.2	67.8	95.6	71.7	89.8	67.5	96.0
1981	70.0	88.9	66.4	95.8	69.8	89.3	66.4	96.1
1980	70.6	90.8	62.9	95.9	68.2	89.1	63.0	96.2
1979	70.2	90.7	62.9	96.1	68.0	90.4	63.0	96.4
1978	70.6	90.8	61.0	96.0	67.2	90.6	60.7	96.3
1977	68.6	90.7	58.3	96.0	64.1	90.9	58.9	96.2
1976	66.9	90.9	55.8	95.9	63.0	89.9	57.1	96.0
1975	63.0	91.5	53.5	95.8	62.0	89.3	54.9	96.4
1974	62.6	92.7	51.1	96.3	62.1	90.3	53.7	96.7
1973	62.9	91.8	48.5	96.3	61.7	91.0	52.2	96.8
1972	60.9	92.6	45.8	96.0	61.4	91.0	50.7	97.0
1971	59.2	87.8	43.5	91.7	61.0	88.5	50.0	93.8
1970	57.5	88.3	43.1	91.6	60.0	89.8	49.9	94.3

TABLE SIX (continued)

LABOR FORCE PARTICIPATION RATES BY AGE, RACE AND SEX 1970-1986 (CONT)

	45 to 54				55 to 64			
	Black Women	Black Men	White Women	White Men	Black Women	Black Men	White Women	White Men
1985	65.7	83.0	64.2	92.0	45.3	58.9	41.5	68.8
1984	64.5	83.7	62.7	92.0	46.1	58.9	41.2	69.5
1983	62.3	84.5	61.9	91.9	44.8	62.6	41.1	70.0
1982	62.4	82.2	61.4	92.2	44.8	61.9	41.5	71.0
1981	62.0	82.7	60.9	92.4	45.4	62.1	40.9	71.5
1980	61.4	83.1	58.1	92.1	44.9	61.7	41.6	73.1
1979	59.6	84.6	58.1	92.2	44.1	64.8	41.6	73.6
1978	59.4	83.3	56.7	92.1	43.9	67.8	41.2	73.9
1977	58.0	82.0	55.4	92.2	43.8	65.5	40.8	74.7
1976	56.9	82.4	54.7	92.5	43.8	65.1	40.8	75.4
1975	56.6	83.5	54.3	92.9	43.1	67.6	40.7	67.5
1974	56.3	84.1	54.3	93.0	43.0	68.9	40.4	78.1
1973	56.1	87.5	53.4	93.5	44.8	69.5	40.8	79.0
1972	57.1	85.6	53.4	94.0	43.9	72.5	42.0	81.2
1971	59.4	86.5	53.7	94.1	47.1	77.8	42.5	82.6
1970	60.2	87.7	53.7	94.3	47.1	79.2	42.6	83.3

	65 and over			
	Black Women	Black Men	White Women	White Men
1985	9.4	13.9	7.0	15.9
1984	8.0	13.7	7.5	16.4
1983	8.2	14.0	7.8	17.7
1982	8.5	15.9	7.8	17.9
1981	9.3	16.0	7.9	18.5
1980	9.9	16.8	8.1	19.1
1979	10.5	19.4	8.1	20.1
1978	10.8	21.0	8.1	20.4
1977	10.2	19.9	8.0	20.2
1976	11.1	19.7	8.0	20.3
1975	10.5	20.5	8.0	21.8
1974	10.2	21.5	8.0	22.5
1973	11.1	22.4	8.7	22.8
1972	12.5	24.3	9.0	24.4
1971	11.5	24.5	9.3	25.6
1970	12.2	27.4	9.5	26.7

* Data for 1970 and 1971 includes blacks and others

Sources: Employment and Earnings, January 1986,1985,1972,1971 and
Handbook of Labor Statistics, December 1983.

TABLE SEVEN
MEDIAN WAGE FOR WOMEN FULLTIME WORKERS BY RACE AND SELECTED OCCUPATION
1984

TOTAL	WF WAGE	BF WAGE	RATIO
ALL OCCUPATIONS	264	242	91.67
MANAGERIAL/PROFESSIONAL	378	359	94.97
EXECUTIVE/ADMINIST	358	350	97.77
PROFESSIONAL SPECI	397	359	90.43
ENGINEERS	553	457	82.64
HEALTH ASSESSMEN (NURSES, TECHNICIANS)	404	370	91.58
COLL TEACHERS	456	428	93.86
OTHER TEACHERS	374	359	95.99
TECHNICAL, SALES, ADMINISTRATIVE SUPPORT	256	255	99.61
TECHNICIANS	317	297	93.69
SALES OCCUPATIONS	215	181	
ADMINISTRATIVE SUPPORT	256	256	100.00
SECRETARIES	258	249	96.51
SERIVCE OCCUPATIONS	180	180	
PRIVATE HOUSEHOLD WORKERS	124	143	115.32
FOOD SERVICE	165	171	103.64
HEALTH SERVICE	202	199	98.51
CLEANING SERVICE	193	183	
PRECISION PRODUCTION CRAFT AND REPAIR WORKERS	256	245	95.70
OPERATORS, FABRICATORS AND LABORERS	211	206	97.63
MACHINE OPERATORS AND ASSEMBLERS	210	206	98.10
FARMING,	179	149	83.24

SOURCE: UNPUBLISHED DATA, BUREAU OF LABOR STATISTICS 1984

TABLE EIGHT
MEDIAN INCOME BY RACE AND EDUCATION FOR THOSE 25 AND OVER, 1984 984

	ALL WORKERS				FULL TIME WORKERS			
	BLACK WOMEN	WHITE WOMEN	BLACK MEN	WHITE MEN	BLACK WOMEN	WHITE WOMEN	BLACK MEN	WHITE MEN
TOTAL	7238	7815	11552	19904	14687	16360	18001	26090
ELEMENTAY EDUCATION	4241	4860	6259	9207	10480	10421	13223	16112
<8 YRS	4027	4552	6062	8004	9993	9787	12881	15079
8 YEAR	4962	5209	7320	10626	10804	10849	14109	17114
HIGH SCHOOL EDUCATION	6910	7141	11705	18064	12804	14339	16056	23189
1-3 YR	5043	5659	9561	13386	10170	12134	14240	20067
4 YEAR	8381	7762	12949	19614	13619	14733	16724	24000
COLLEGE EDUCATION	14408	12543	18366	26723	18224	20010	23774	30678
1-3 YR	11611	10294	16279	22027	15795	17114	21105	26302
4+ YRS	18401	15657	21908	30779	21222	22089	28244	34403
4 YR	16894	13346	19785	28895	20626	20291	25110	32022
>4 YRS	20279	19641	27534	33367	23142	25184	34113	37052
MEDIAN EDUCATION	12.3	12.6	12.3	12.7				

SOURCE: MONEY INCOME OF HOUSEHOLDS, FAMILIES AND PERSONS IN THE UNITED STATES, P-60, NO. 151, TABLE 33

TABLE NINE

OCCUPATIONAL CHANGE
1972-1982

TYPE OF EMPLOYMENT (NUMBERS IN THOUSANDS)	1972	1982	PERCENT CHANGE
TOTAL	81702	99526	21.2
BLACK	7754	9189	18.5
FEMALE	31702	43256	36.4
BLACK FEMALE	3406	4552	33.6
PROFESSIONAL	11459	16951	47.9
BLACK PROFESSIONAL	639	1088	70.3
FEMALE PROFESSIONAL	4502	7650	69.9
BLACK FEMALE PROFESSIONAL	360	656	82.2
TEACHERS	2841	3266	15.0
FEMALE TEACHERS	1988	2310	16.2
BLACK FEMALE TEACHERS	179	231	29.1
NURSES	801	1415	76.7
FEMALE NURSES	782	1353	73.0
BLACK FEMALE NURSES	48	104	116.7
CLERICAL	14247	18446	29.4
FEMALE CLERICAL	10777	14890	38.2
BLK FEMALE CLERICAL	1101	1738	57.9

SOURCE: UNPUBLISHED DATA, BUREAU OF LABOR STATISTICS
1972 AND 1982

TABLE TEN
LAW SCHOOL ENROLLMENTS
1971-1985

ACADEMIC YEAR	TOTAL STUDENTS	PERCENT CHANGE	BLACK STUDENTS	PERCENT CHANGE
1971	94468		3744	
1972	101707	7.7	4423	18.1
1973	106102	4.3	4817	8.9
1974	110713	4.3	4995	3.7
1975	116991	5.7	5127	2.6
1976	117451	.03	5503	7.3
1977	118557	.1	5304	-3.7
1978	121606	2.6	5350	.08
1979	122860	1.0	5257	-1.7
1980	125397	2.1	5506	4.7
1981	127312	1.5	5789	5.1
1982	127828	.4	5832	.07
1983	127195	-.4	5967	2.3
1984	125698	-1.1	5955	-.02
1985	124092	-1.2	6052	1.6
CHANGE 1971-85		31.4		61.6
CHANGE 1971-78		28.7		42.9
CHANGE 1979-85		1.0		15.1

SOURCE: REVIEW OF LEGAL EDUCATION IN
THE UNITED STATES, FALL, 1985
CHICAGO: AMERICAN BAR ASSOCIATION

The Impact of Affirmative Action Regulation and Equal Employment Law

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Affirmative action, mandated by Executive Order 11246 in 1965, is one of the most controversial government interventions in the labor market since abolition. In recent years, two major criticisms of affirmative action have been given prominent voice. The first is that affirmative action does not work; therefore, we should dispose of it. The second is that affirmative action does work; therefore, we should dispose of it. My chief concern here will be with the first of these criticisms. While much has been said concerning the propriety of affirmative action in theory, little is known about the impact of affirmative action in practice. If affirmative action has not changed the employment patterns of non-whites and females, then much of the discussion since 1965 of its philosophical merits amounts to shadow-boxing. The goal of affirmative action is to increase employment opportunities for females and minorities. Has affirmative action been successful in achieving this goal? In this paper, affirmative action will refer to the provisions related to race, color and sex of Executive Order 11246 as amended by Executive Order 11375 [3 C.F.R. 169 (1974)]. This is distinct from affirmative action required as a remedy by judicial decision, which shall not be discussed here.

The purpose and development of affirmative action cannot be fully understood outside of history, a history that includes most saliently the institution of slavery in the 18th and 19th centuries, and the Civil Rights movement of the mid 20th century. The genesis in discord and crisis of the first Executive Order by President Roosevelt is most instructive. To protest employment discrimination at the beginning of World War II, A. Philip Randolph, President of the Sleeping Car Porters Union, threatened to disrupt the defense effort by a mass demonstration of blacks in Washington, D.C. on July 1, 1941. Less than one week before the planned rally, Executive Order 8802 was issued and the demonstration called off.(Goldstein, 1981, p. 10) In the words of the U.S. Commission on Civil Rights, "the Executive Order was prompted by the threat of a Negro March on Washington, which would have revealed to the world a divided country at a time when national unity was essential".(USCCR, 1961, p. 10) Accomodation was only reached under dire threat, and even then was of a limited nature.

The distance this country has come in terms of the growing import of affirmative action, expanding intervention by the federal government, and changing attitudes towards discrimination since 1941 can best be judged by considering the words of Mark Ethridge, first Chairman of the Fair Employment Practice Committee, established to supervise compliance with the executive order. In the following quote, Ethridge sharply limits the scope of anti-discrimination policy in a manner startling to modern eyes.

> Although he defended the granting of civil rights and equal opportunity to Negores, he also affirmed his personal support of segregation in the South. Stressing that 'the committee has taken no position on the question of segregation of industrial workers', he emphasized that 'Executive Order 8802 is a war order, and not a social document', that it did not require the elimination of segregation, and that had it done so, he would have considered it 'against the general peace and welfare . . . in the Nazi dictatorial pattern rather than in the slower, more painful, but sounder pattern of the democratic process.'(Ruchames, 1953, p. 28)

Of course, the delicate question of how to swiftly remedy the harm done by discrimination without distorting the democratic process is still with us, as is the question of whether the democratic process can function well outside an integrated society. Democratic society requires a consensus for change, but it depends upon the full participation of its members. The last forty years have witnessed a slow and at times painful process of confrontation and accommodation, developing a consensus that provides the foundation for a lasting change in attitudes towards discrimination.

Prior to Executive Order 10925, issued March 6, 1961 by President Kennedy, the anti-discrimination program for federal contractors lacked any real teeth. In a detailed study of the presidential Fair Employment Practice Committees, Norgren and Hill (1964, p. 169, p. 171) state: "One can only conclude that the twenty years of intermittent activity by presidential committees has had little effect on traditional patterns of Negro employment.", and that "It is evident that the non-discrimination clause in government contracts was virtually unenforced by the contracting agencies during the years preceeding 1961." Compliance programs, such as Plans for Progress and its predecessors, were voluntary. Their history strikes at least a cautionary note about the effectiveness of programs that have no legal sanctions behind them. The 1961 Executive Order was the first to go beyond anti-discrimination and to require contractors to take affirmative action, and the first to establish specific sanctions including termination of contract and debarment. Coming on the heels of Title VII of the Civil Rights Act of 1964, Executive Order 11246, which made the Secretary of Labor rather than a presidential committee responsible for administering enforcement, was the first to be enforced stringently enough to provoke serious conflict and debate. On October 13, 1967, Executive Order 11375 amended 10246 to expand its coverage to women, although effective regulation against sex discrimination did not reach full stride until after the Equal Employment Act of 1972 was enacted.

The details of the affirmative action obligation began to be elaborated in a twisting history. Detailed regulations, including numerical goals, were introduced in 1969, after the Comptroller General ruled that the affirmative action obligation was too vague to fulfill the requirement that minimum contract standards be made clear to prospective bidders. [48 Comp. Gen. 326 (1968)]. Numerical goals were first introduced in the manning tables embodied in the Cleveland and Philadelphia plans for construction contractors (see Jones), and later won the tacit approval of Congress and the courts.

Under Executive Order 11246, federal contractors agree "not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, and to take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex or national origin."[3 C.F.R. 169 202(1)(1974)]. This language imposes two obligations: first, not to discriminate; second, whether or not there is any evidence of discrimination, to take affirmative action not to discriminate. It is a measure of this nation's progress that the first obligation is now largely beyond debate. The redundant sounding second obligation, however, is anything but. It has provoked continual controversy, and its meaning and effect are not well understood. In the heated political arguments over whether and what affirmative action should be, mythic visions have come to overwhelm any clear conception of what affirmative action actually is. To say that this second obligation as it has been developed in the regulations, has provoked a good deal of debate would be a considerable understatement.[See also Fiss (1971) and Glazer (1975)] In the words of one legal expert:

> The affirmative action obligations imposed by the Contract Compliance Program are separate and distinct from non-discrimination obligations and are not based on proof of individual acts of discrimination. At the logical extreme, affirmative action and non-discrimination obligations can be viewed as mutually exclusive and inconsistent . . . in

> practice, the non-discrimination and affirmative action obligations may be incompatible when, for example, a less qualified, less senior female or black is granted a job preference that disadvantages a male or white solely on the basis of sex or race to achieve an affirmative action commitment.(Smith, p. 1028)

Reviewing the development of affirmative action into "quotas", Lawrence Silberman, former Undersecretary of Labor from 1970 to 1973, wrote:

> "In practice, employers anxious to avoid inquiry from government officials concerned only with results (rather than merely with efforts) often earmarked jobs for minorities without regard to qualifications. . . . In hindsight, one can see this was predictable. We wished to create a generalized, firm, but gentle pressure to balance the residue of discrimination. Unfortunately, the pressure numerical standards generate cannot be generalized or gentle; it inevitably causes injustice. . . . Our use of numerical standards in pursuit of equal opportunity has led ineluctably to the very quotas, guaranteeing equal results, that we initially wished to avoid. . . . To be sure, we were not solely responsible. Federal courts already had begun to fashion orders in employment discrimination cases which went beyond relief for those specifically discriminated against. The orders required employers found guilty of discrimination to hire in accordance with a set ratio of whites to blacks, whether or not new black applicants had suffered discrimination. Thus was introduced a group rights concept antithetical to traditional American notions of individual merit and responsibility. It was on that developing legal authority that the Philadelphia Plan was defended when challenged. . . . "

This raises at least two issues. The first is that an affirmative action program without measurable results invites sham efforts and may also fail to meet the requirement of federal procurement law that prospective bidders be informed of the minimum standards for a contract. On the other hand, numerical standards in the quest for equal opportunity open the door to an emphasis on equal results. The second issue raised is whether discrimination and its remedy should be addressed in terms of groups or individuals. James E. Jones, Jr., former Associate Solicitor of Labor for Labor Relations and Civil Rights, and an architect of the Revised Philadelphia Plan, takes (1977, p. 67) as his fundamental premise that:

> "the affirmative action obligation is a contractual undertaking imposed by the Executive Orders without concern for the guilt or innocence of the subject contractors and without concern for individual entitlement to the fruits of affirmative action efforts. Thus, an individual complaint oriented process of enforcement completely misperceives the function which should have been the major emphasis of the administrative process."

In the past the affirmative action obligation has been criticized as being vague and open-ended. In 1967, the Director of the OFCC, Edward Sylvester, stated: "There is no fixed and firm definition of affirmative action. I would say that in a general way, affirmative action is anything you have to do to get results. . . . Affirmative action is really designed to get employers to apply the same kind of imagination and ingenuity that they apply to other phases of their operation."(Report, 1967, p. 73-74)

To be vague concerning methods is the ideal decentralized approach, but this is also vague about the critical issue of ends. What is the goal against which results are judged: non-discrimination or increased minority and female employment? The distinct, practical question of whether the two can be distinguished in an operational sense is, of course, one of the important questions that will concern us here.

Past Studies

The literature on affirmative action can be divided into studies of the regulatory process that find it mortally flawed and studies of impact that find it successful. The process studies by the U.S. Commission on Civil Rights (USCCR), the General Accounting Office (GAO), and the House and Senate Committees on Labor and Public Welfare all conclude that affirmative action has been ineffective and blame weak enforcement and a reluctance to apply sanctions. For example, in its 1975 appraisal of the contract compliance program, the GAO found (p. 30) that "The almost nonexistence of enforcement actions taken could imply to contractors that the compliance agencies do not intend to enforce the program." That this is not merely politics can be judged from the fact that the Department of Labor has been sued with some measure of success more than once for failure to enforce affirmative action properly. See, e.g., the case of Legal Aid Society of Alameda County v. Brennan, 608 R.2d 1319 (9th Cir. 1979), cert. denied 100 S. Ct. 3010 (1980). Debarment, the ultimate sanction, has been used only 26 times; debarment of the first nonconstruction contractor did not occur until 1974. The GAO and USCCR have found that other forms of regulatory pressure, such as pre-award reviews, delay of contract award, and withholding of progress payments, have not been forcefully and consistently pursued. However, as evidenced by the increased incidence of debarment and back-pay awards, enforcement did become more aggressive after 1973.

In the light of the unanimity of these process studies in finding the affirmative action regulatory mechanism seriously deficient, it is surprising that the few econometric studies of the impact of affirmative action in its first years (Burman 1973; Ashenfelter and Heckman 1976; Goldstein and Smith 1976; Heckman and Wolpin 1976), all based on a comparison of EEO-1 forms by contractor status, have generally found significant evidence that it has been effective for black males. These few studies of the initial years of affirmative action (1966-73) are not directly comparable because of different specifications, samples, and periods. They do find, nevertheless, that despite weak enforcement in its early years, and despite the ineffectiveness of compliance reviews, affirmative action has been effective in increasing black male employment share in the contractor sector, but generally ineffective for other protected groups.(See Brown for a review) Of the four studies, Goldstein and Smith (1976) find the weakest effects. Their results indicate a .0004 yearly increase in black males' share of total employment and a decrease in the ratio of black to white males among nonreviewed contractors between 1970 and 1972. Heckman and Wolpin's (1976) results indicate an effect an order of magnitude greater, a .007 annual increase in black male's share of total employment between 1972 and 1973 comparing contractors and noncontractors. For comparison, Burman (1973) reports roughly a .003 annual increase in black males' share of male employment in the late sixties, and Ashenfelter and Heckman's (1976) results indicate a .0086 yearly increase in the ratio of black to white males between 1966 and 1970. These past studies are all based on data for a period that largely predates the beginning of substantial enforcement of regulations barring sex discrimination, the start of aggressive enforcement in the mid seventies, and the major reorganization of the contract compliance agencies into the OFCCP in 1978.

Despite weak enforcement in its early years, these studies generally conclude that affirmative action under the contract compliance program did lead to significant increases in black males' employment share in contractor firms. This econometric finding of a positive result is all the more notable in light of the consistently negative appraisal of the OFCCP's regulatory mechanism by Congress, the courts, the GAO, and the USCCR.

The Impact of Affirmative Action on Employment

Has affirmative action been effective in increasing the employment of minorities and women? Affirmative action under the Executive Order applies only to federal contractors. One method of judging the effect of affirmative action is then to compare the growth of minority and female employment at federal contractor establishments with their employment growths at similar establishments that do not bear the affirmative action obligation. With the cooperation of the U.S. Department of Labor, I performed such a comparison using EEO-1 data on employment demographics reported by 68,690 establishments in 1974 and 1980. This sample includes more than 16 million employees. The results summarized here are reported at length in Leonard (1983) and (1984a).

Table 1 [reproduced from Leonard (1984a)] compares the mean employment share of demographic groups in 1974 and 1980 across contractor and non-contractor establishments. Between 1974 and 1980 black male and female, and white female employment shares increased significantly faster in contractor establishments than in non-contractor establishments. The other side of this coin is that white males' employment share declined significantly more among contractors. Employment shares have increased for non-black minorities, but the differences across sectors in Table 1 are not always significant.

Affirmative action appears to have similar effects once other variables are controlled for. In other work I have estimated the impact of affirmative action after controlling for establishment size, growth region, industry, occupational and corporate structure. These additional controls help assure that differences between contractor and non-contractor establishments reflect the impact of affirmative action rather than other unobserved differences.

Table 2 [reproduced from Leonard (1984a)] shows a consistent pattern across demographic groups of effective affirmative action. Over a 6-year period the employment of members of protected groups grew significantly faster in contractor than in non-contractor establishments. The growth rate is 3.8% faster for black males, 7.9% for other minority males, 2.8% for white females, and 12.3% for black females. A summary measure, white male employment, grew 1.2% slower in the contractor sector. All of these effects are significant at the 99% confidence level or better, and the effects for blacks and for white males are robust across a number of specifications.

The demand shift for black males relative to white males estimated here for contractor status is similar to that previously estimated by Ashenfelter and Heckman (1976) and by Heckman and Wolpin (1976). The growth rate of black male employment over 6 years in the contractor sector is 3.8% greater than among noncontractors. Taking the sixth root yeilds an annual growth rate that is 0.62% greater in the contractor sector. For white males, the annual growth rate is 0.2% slower among contractors, so contract status appears to shift the demand for black males relative to white males by 0.82% per year. For comparison, using a different specification in a sample of integrated establishments for the earlier period 1966-70, Ashenfelter and Heckman report an annual shift corresponding to 0.86% per year.

Compliance reviews have played a significant role over and above that of contractor status, advancing black males by 7.9%, other minority males by 15.2%, and black females by 6.1% among reviewed establishments. Compliance reviews have retarded the employment growth of whites. The effect is significantly negative in the case of white females but small and insignificant in the case of white males--whom one would have expected to bear the brunt of the adjustment. The anomalous result for white females is sensitive to specification. It is also difficult to reconcile with the positive impact of contractor status on white females, but may be influenced by a review process that asks for more than last year, rather than more than average, in a time of sharply increasing female labor supply. For black and other minority males, the impact of undergoing a compliance review is roughly twice that of being a contractor. With the exception of white females, compliance reviews have an additional positive impact on protected group employment beyond the contractor effect. Direct pressure does make a difference.

The estimate in equation (3) is that the growth rate of black males' employment increased 3.8% more in contractor establishments, not counting the direct effect of reviews: 6.8% of all contractor establishments, accounting for 17.4% of all contractor employment, were reviewed in subsequent years. In these establishments the black male growth rate was an additional 7.9% faster than in nonreviewed contractors, so 12% faster than noncontractors. The total impact of affirmative action among contractors is then the weighted average of the annual 0.62% shift among nonreviewed contractors and the 1.91% shift among reviewed contractors, or 0.84% per year. The demand shifts for other minority males, white females, and black females are 1.69%, 0.37%, and 2.13%, respectively. The shift is largest for black females, although the ranking of these effects is sensitive to specification.

Employment opportunities depend critically on growth. Table 2 also indicates that minorities and females experienced significantly greater increases in representation in establishments that were growing and so had many job openings. The elasticity of white male employment growth with respect to total employment growth is .976, significantly less than one. This indicates that members of protected groups dominate the net incoming flows in both contractor and noncontractor establishments. The respective elasticities for black males, other males, white females, and black females are 1.22, 1.09, 1.02, and 1.19, all significantly greater than one. Particularly in the case of blacks, of whom the quantity supplied has not greatly increased, this suggests the importance of Title VII, which applies to all establishments in the sample, in expanding employment opportunities. Establishments that are not part of multiplant corporations have significantly lower growth rates of employment of members of protected groups. Corporate size is probably of greater consequence than establishment size, with larger corporations showing greater increases in minority and female employment. Establishment size itself has insignificant effects on white and black males, but other males and black females grow significantly faster at larger establishments, while white females grow significantly slower. It is also important to note that the tests here also control for the skill requirements of each establishment. Establishments that are nonclerical white-collar intensive exhibit faster employment growth for both male and female blacks and significantly slower growth for white males.

The efficacy of affirmative action depends critically on employment growth. The even-numbered equations in table 2 include interactions of contractor and review status with establishment size and growth rate. In every case, being a contractor or undergoing a compliance review have significantly greater effects if the establishment is growing. The evidence with respect to interactions of affirmative action with establishment size is mixed. To illustrate, equation (4) indicated that while black male employment grows 5.6% faster at contractor establishments than a noncontractor establishments with stable employment, it grows 6.7% faster at the mean total employment growth rate of 5.1%, and 7.4% faster if total employment grows by 15%. Affirmative action has been far more successful at establishments that are growing and have room to accommodate federal pressure.

The tests presented here suggest that while generating tremendous public criticism and resistance and while undergoing frequent regulatory reorganization, affirmative action has actually been successful in promoting the employment of minorities and females, though less so in the case of white females. In the contractor sector over a six year period affirmative action has increased the demand relative to white males for black males by 6.5%, for nonblack minority males by 11.9%, and for white females by 3.5%. Among females, it has increased the demand for blacks relative to whites by 11.0%. For a program lacking public consensus and vigorous enforcement, this is a surprisingly strong showing. While the gains of white females are smaller than those of blacks, it is important to keep in mind that the employment of females and minorities has been increasing in both sectors. Indeed, if the OFCCP pressured establishments to hire more females and minorities relative to their own past records rather than to industry and region averages, the observed pattern is just what we would expect to see during a period when female labor supply had been growing. Females' share would increase at all establishments because of the supply shift, and contractor establishments would be under little pressure to employ more females than noncontractors. The relatively short history of affirmative action for females may also help explain the differential impact of affirmative action across protected groups.

This section has reviewed significant large-sample evidence with detailed controls at the establishment level. Members of protected groups have enjoyed improved employment opportunities at contractor establishments subject to affirmative action, and compliance reviews appear to have been an effective tool in changing employment patterns. The evidence here is that a process that has been frequently criticized as largely an exercise in paper pushing has actually been of material importance in prompting companies to increase their employment of minorities and females.

Occupational Advance

One of the major affirmative action battlefields lies in the white-collar and craft occupations. It is in these skilled positions that employers are most sensitive to productivity differences and have complained the most about the burden of goals for minority and female employment. It is also in this region of relatively inelastic supply that the potential wage gains to members of protected groups are the greatest.

All four past studies of the impact of affirmative action on occupational advance have found that while affirmative action increases total black male employment among federal contractors, it does not increase their employment share in the skilled occupations. Burman (1973) found the employment impact of affirmative action to be largest in clerical and operative occupations, and negative, though insignificant, for managers between 1967 and 1970. He also found that affirmative action had an insignificant impact on an index of occupational status. Ashenfelter and Heckman (1976) extended these results, finding that affirmative action led to increases in black males' employment share, but that this was largest and most significant among operatives between 1966 and 1970. At the tops of occupational ladders, black males' share was estimated to fall relative to that of white males in the contractor sector, sometimes significantly. Overall, Ashenfelter and Heckman found no significant impact of contractor status on the relative occupational position of black workers. Goldstein and Smith (1976) found similar results between 1970 and 1972. Heckman and Wolpin (1976) found that black male employment gains were concentrated in blue-collar occupations between 1972 and 1973. They also found that contractors utilized a greater proportion of white males, and fewer blacks and females than did non-contractors in some white-collar occupations.

These studies suggest that contractors have been able to fulfill their obligations by hiring into relatively unskilled positions. Before 1974, affirmative action appears to have been more effective in increasing employment than in promoting occupational advancement. Some might argue that such a result is only to be expected given a short supply of skilled minorities or females. The presumption behind affirmative action, however, is that trainable members of protected groups will be considered for skilled employment. Even in the case of a small fixed supply, in its initial years affirmative action should induce a reshuffling of skilled blacks and women from non-contractor to contractor firms, without any upgrading of individuals necessary. By the late 1970s affirmative action was no longer as ineffective as it may have been in its early years in increasing minority employment in skilled occupations, according to results summarized here from Leonard (1984b). This difference may reflect the increasing supply of highly educated blacks, as well as a more aggressive enforcement program, in particular the consolidation of enforcement activities into the Office of Federal Contract Compliance Programs (OFCCP) in 1978.

The full story of the impact of affirmative action requires an analysis of employment data within disaggregated occupations. To test this Leonard (1984b) regresses the change in employment share on contractor and review status, establishment size, corporate structure, industry, region, and growth of total employment for the given demographic group, in samples of establishments reporting employment in nine occupations and two trainee positions. The evidence is most striking in the case of black males. In every occupation except laborers and white-collar trainees, black males' share of employment has increased faster in contractor than in non-contractor establishments, and except for operatives and professionals these differences are significant. This impact is found in both the proportionate change in black males' share of total employment, and in the proportionate change in the ratio of black male to white male share.

The marginal impact of a compliance review, conditional on contractor status, is also tested. The relative importance of being a contractor and of being a reviewed contractor is mixed across occupations, but in every case, except blue-collar trainees and clerks, reviewed establishments have increased black males' employment share more than non-reviewed contractors.

The total impact of the contract compliance program, the weighted sum of contractor and review effects, shows some evidence of a twist in demand toward more highly skilled black males. The contract compliance program has not reduced the demand for black males in low skilled occupations, except for laborers. It has raised the demand for black males more in the highly skill white-collar and craft jobs than in the blue-collar operative, laborer, and service occupations. While this may help explain why highly skilled black males have been better off than their less skilled brethren, it does not help explain why low skilled black males should be having greater difficulty over the years in finding and holding jobs.

Affirmative action has also helped non-black minority males, although to a lesser extent. There is evidence of a twist in demand toward Hispanic, Asian, and American Indian males in white-collar occupations, particularly in sales and clerical positions, and away from this group in operative and laborer positions. Compliance reviews have had a strong and significant additional impact in the professional, managerial, and craft occupations. The total impact of the contract compliance program on non-black minority males is positive in the white-collar, craft, and service occupations, and in training programs. Relative to white males, affirmative action has increased the occupational status of non-black minority males by 2%.

The evidence within occupations suggests that the contract compliance program has had a mixed, and often negative impact on white females. For technical, sales, clerical, craft, and trainee workers, contractor status is associated with a significant decline in white females' employment share. Compliance reviews have also often had a negative impact. While both contracts and reviews produce a significant 1% increase in white females' occupational status, this positive impact disappears when changes in white females' occupational status are compared to the relatively greater gains of white males.

In contrast to whites, black females in contractor establishments have increased their employment share in all occupations except technical, craft, and white-collar trainee. Compliance reviews have had a mixed effect across occupations. The positive impact of the contract compliance program is even more marked when the position of black females is compared with that of white females. Overall, black females' index of occupational status has increased 1% relative to that of white females under affirmative action.

The conclusion drawn from this detailed analysis of employment by occupation is that with the exception of white females, affirmative action appears to have contributed to the occupational advance of members of protected groups. In particular, for non-white males affirative action has increased demand relatively more in the more highly skilled occupations. In a useful and important paper, Smith and Welch (1984) show that part of this occupational upgrading may be overstated because of biased reporting on EEO-1 forms, in particular the upward reclassification of minority or female intensive occupations. The finding of occupational advance for non-white males in Leonard (1984b) is reinforced by evidence from CPS wage equations that affirmative action has narrowed the difference in earnings between the races by raising the occupational level of non-white males. These wage equations are reported at greater length in other work (Leonard, 1984d). To the extent that contractors may have selectively reclassified upwards black and female intensive detailed occupations at a faster rate than did non-contractors, this study and its predecessors will oversate the actual occupational advance due to affirmative action. Of course, pure reclassification would cause black losses in the lower occupations, which is generally not observed.

Affirmative action does not appear to have directly contributed to the economic bifurcation of the black community. As Leonard (1984d) shows, minority male wages increase relative to those of white males in cities and industries with a high proportion of employment in federal contractor establishments subject to affirmative action, although the effect is not always significant. Affirmative action appears to increase the demand for lowly educated minority males as well as for the highly educated.

If minorities and females do not share the skills and interests of white males, then perhaps the best one can expect from an affirmative action program is to increase their employment. But to the extent that minorities and females share the qualifications and interests of white males, an effective affirmative action program should improve their chances of sharing the same occupations too.

Just as no policy works in isolation, so none can be evaluated in isolation. The major finding reviewed in this section is that affirmative action has increased the demand for minorities in skilled jobs in the contractor sector. The relative demand shift has been greater for skilled than unskilled workers. The success of this program in skilled occupations after 1974, where none had been observed before, is probably due in part to the increasing supply of skilled minorities in many fields, as well as to the more aggressive use of sanctions after the early 1970's. The weaker results for white females must be considered in light of the massive increase in female labor supply that has led to increased frmale employment throughout the economy, and which may have obscured the contractor effect. We have also seen minorities and females enjoying the greatest gains at growing establishments, both contractor and noncontractor. The lesson drawn is that affirmative action programs work best when they are vigorously enforced, when they work with other policies that augment the skills of members of protected groups, and when they work with growing employers.

Goals or Quotas?

Have these employment advances been achieved through the use of rigid quotas? The goals and timetables for the employment of minorities and females drawn from federal contractors under affirmative action stand accused of two mutually inconsistent charges. The first is that "goal" is really just an expedient and polite word for quota. Affirmative action has really imposed inflexible quotas for minority and female employment. The second is that these goals are worth less than the paper they are written on. Affirmative action is a game played for paper stakes and has never been enforced stringently enough to produce significant results.

Under Executive Order 11246, federal contractors are required to take affirmative action not to discriminate and to develop affirmative action plans (AAPs), including goals and timetables, for good-faith efforts to correct deficiencies in minority and female employment. The aim of this section, which summarizes Leonard (1985b), is to measure good faith, to determine what affirmative action promises are worth. Is negotiation over affirmative action goals an empty charade played with properly penciled forms, or does it in fact lead to more jobs for minorities and females in the contractor sector? If the latter is the case, are these goals so strictly adhered to as to constitute quotas? Since the reviews examined here have already been shown to be useful (Leonard (1984a)), the question here is not "Are reviews effective?" but rather "Do promises extracted during the review process contribute to the impact of reviews?"

It is not beyond reason to suppose that they do not. Neither the penalties for inflating promises to hasten the departure of federal inspectors nor the prospects of being apprehended seems great. The ultimate saction available to the government in the case of affirmative action is debarment, in which a firm is barred from holding federal contracts. The first debarment of a non-construction cntractor did not take place until 1974, and in total only 26 firms have ever been debarred. If the Office of Federal Contract Compliance (OFCCP) finds the establishment's affirmative action plan unacceptable, it may issue a show-cause notice as a preliminary step to high sanctions. This step has been taken in only 1 to 4 percent of all reviews (USCCR, 1975, p. 297). Of these, one-third to one-half involve basic and blatant paperwork deficiencies such as the failure to prepare or update an AAP (US GAO, 1975, p. 26).

The other major sanction used by the OFCCP is back pay awarded as part of a conciliation agreement. In 1973 and 1974, $54 million was awarded in 91 settlements, averaging $63 per beneficiary (US GAO, 1975, p. 46). In 1980, in an even more skewed distribution, $9.2 million was awarded to 4336 employees in 743 conciliation agreements (USCCR, 1982, p. 47). These beneficiaries represented less than two-thirds of 1 percent of all protected-group employees at just the reviewed establishments. While these affirmative action sanctions have not been heavily employed, in many cases regulatory sanctions, like weapons of war, are judged most successful just when they are used the least. That does not seem to be the case here. The U.S. Civil Rights Commission, the General Accounting Office, committees of both Houses of Congress, and the courts have all concurred in the judgment that the contract compliance agencies have not made full and effective use of the sanctions at their disposal.

The low penalties if caught are compounded by the low probability of apprehension, although the Department of Defense (DOD), upon whose review this section concentrates, had one of the most vigorous programs. In 1976, DOD is reported to have reviewed 24 percent of its identified contractors, compared to an average for all compliance agencies of 11 percent [USCCR, 1977, p. 113]. In 1977, DOD had a ratio of 42 contractor facilities per staff member, and a total budget of $345 per contractor [USCCR, 1977, p. 107]. It is striking to note that compliance reviews have not typically been targeted directly against the most blatant form of employment discrimination. An establishment's history of employment demographics has typically not played a role in the incidence of compliance reviews, for a reason as procedurally obvious as it is logically obscure: compliance officers have not generally looked at an establishment's past AAPs or EEO-1 forms in targeting reviews. Heckman and Wolpin (1976) report that reviews are essentially random with respect to the level or growth rates of an establishment's demographics. Leonard (1985a) finds evidence that establishments with more blacks and females are actually more likely to be subsequently reviewed. These two empirical studies agree that affirmative action compliance reviews have not been targeted with greater frequency at establishments with relatively few minorities or females.

In this light, the expected penalties for making promises to the government with little regard for the likelihood of fulfilling those promises do not seem overwhelming. In such circumstances, affirmative action promises may contain little, if any, information about the establishment's future employment. On the other hand, the OFCCP may use more subtle and less easily observed pressures. Firms may care about their reputations, not only with the OFCCP but also with their own employees and the public, and so strive to set reasonable goals. More importantly, firms may react to the threat of Title VII litigation, with its substantial legal costs and penalties, hanging over their heads while under affirmative action review.

The employment goals that firms agree to under affirmative action are not vacuous; neither are they adhered to as strictly as quotas. While affirmative action promises are inflated, they are not hollow. For a sample of establishments that experienced more than one compliance review during the 1970s, Leonard

(1985b) compares the goals with the employment actually achieved one year later, as in Table 3. The mode year for which projections are made is 1976. For an observation in the mode year then, this table shows actual employment in 1974 and 1975, a projection of employment for 1976 made in 1975, and actual subsequent employment in 1976. The first finding in Table 1 is that establishments on average overestimate the growth of total employment. They project 1 percent employment growth one year ahead, but employment subsequently falls by 3 percent.

The major finding in Table 3 is that neither absolute minority nor female employment increased, but that both minority and female employment shares did increase. This is because the contraction in employment that did occur was almost lily-white and predominantly male. Most of the average employment decline of 27 was accounted for by white males, whose employment fell by 21. Put another way, while white males averaged 57-63 percent of initial employment, they accounted for 78 percent of the employment decline. Since females and minorities typically have lower seniority, they are usually found to suffer disproportionately more during a downturn. In this perspective, the finding here that white males accounted for most of the employment decline is itself striking evidence of the impact of affirmative action.

These establishments are projecting swift and substantial increases in black male employment. If the one-year projections in Table 3 are extrapolated for ten years, then fully 14 percent of the workforce at these plants would be black males.

These projections and actualizations can also be expressed as shares of total employment. Over time, minority and female employment shares are indeed growing, but not nearly as fast as projected. The firms project growth in minority and female employment share far in excess of their own past history, and far in excess of what they will actually fulfill. Is there then any information at all in their projections, or is the entire procedure an exercise in futility?

The administrative records of completed compliance reviews include data on past and projected employment demographics, indications of deficiencies found in affirmative action plans, and an indicator for preaward compliance reviews in which case one might expect the government's leverage to be greater. These records also indicate successively higher levels of government pressure brought to bear: hours expended by review officers, progress reports required, conciliation process initiated, and, finally, show-cause notice issued. Each of these mileposts in the bargaining process reflects both the establishment's resistance to bureaucratic pressures and, at the same time, increasing levels of bureaucratic pressure itself. If establishment resistance can be controlled for, then these may be taken roughly as inputs into a regulatory production function. By assuming that corporate resistance is controlled for by past growth rates of protected group employment share, and by initial notification of deficiencies, we can then ask what the marginal impact is on factors of regulatory production such as conciliation agreements and show-cause notices. These identifying assumptions are open to question. Caution should be exercised in interpreting the following results since they may be biased toward finding ineffective enforcement if enforcement has been targeted against the most recalcitrant cases.

For all detailed regulation variables, the results are mixed and often insignificant. One might expect greater growth in protected group employment in the case of preaward compliance reviews--reviews mandated prior to the final award of large federal contracts--supposedly because the carrot is dangling so close to the nose. On the other hand, few contracts have ultimately been lost in this process, and the courts have been loath to uphold this type of leverage. Twenty-nine percent of all the reviews studied Leonard (1985b) are preaward reviews, but only in the case of black females did they make a significant positive addition to protected-group employment share beyond that expected from a regular review.

One-third of the establishments were required to make interim progress reports. This marginally greater pressure had no significant impact on their subsequent demographics. One hundred twenty-two establishments, 3 percent of the total, signed conciliation agreements to remedy deficiencies in their AAPs. Perhaps their AAPs looked better, but their immediately subsequent demographics did not.

The ultimate enforcement tool at the Department of Labor's disposal is debarment, but none of the few actual uses of this deterrent shows up in our sample. The strongest pressure observed is a show-cause notice; 24 establishments received such notices offering them the opportunity to show cause why they should not be debarred. On average, they had not significantly altered their demographics a year later. On the whole, there is no compelling evidence here that these detailed components of the enforcement process have a significant impact on the employment of members of protected groups.

The major finding in Leonard (1985b) is that goals set in these costly negotiations do have a measurable and significant correlation with improvements in the employment of minorities and females at reviewed establishments. At the same time, these goals are not being fulfilled with the rigidity one would expect of quotas. While the projections of future employment of members of protected groups are inflated, the establishments that promise to employ more do actually employ more. The striking finding is that the affirmative action goal is the single best predictor of subsequent employment demographics. It is far better than the establishment's own past history, even controlling for the direct impact of detailed regulatory pressure.

This indicates that while establishments promise more than they deliver, the ones that promise more do deliver more, even conditioning on the past growth rate of employment share. There is significant information in the projection over and above what could have been predicted on the basis of past history. On the other hand, the projection falls far short of perfect information. For example, on average a projected 11 percentage point increase in the growth rate of black male employment share results in an actual increase of one percentage point, ceteris paribus.

Not only do establishments generally overpromise minority and female employment, they also overpromise white male employment. This reveals something of their strategy in formulating promises. They do not promise direct substitution of minority and female workers for white males; instead they promise more for all. More accurately, they promise to make room for more minority and female employees by increasing the size of the total employment pie. The first step in bringing these projections down to earth may simply be to ask the establishment whether the projected growth in total employment is reasonable.

We have a policy that appears to be effective in its whole and ineffective in its parts. The paperwork requirements of the AAP, the notification and resolution of AAP deficiencies, and even conciliation agreements and show-cause notices appear to have no general significant impact on subsequent employment demographics. On the other hand, protected-group employment share does generally grow more rapidly at reviewed firms, and goals are strongly correlated with this growth. Do our results then indicate only the establishments' projections reflect variations in supply known to them rather than induced variations in demand? Alternatively, can we infer that extracting greater promises will result in greater achievement? The critical evidence is that there is an overall response to pressure. Within labor markets of the same industry and region, reviewed contractors do better than the nonreviewed, as other work shows. As we have reveiwed here, within a given SMSA the establishments that set higher goals achieve greater growth rates of protected-group employment. My reading of this evidence is that while much of the nit-picking over paperwork is ineffective, the system of affirmative action goals has played a significant role in improving employment opportunities for members of protected groups.

The Targeting of Compliance Reviews

Affirmative action can be broadly conceived of as pursuing either antidiscrimination or job and earnings redistribution goals. That is to say, it can either pursue equality or opportunity or equality of result. Given the historical record, progress toward one goal will often entail progress toward the other. In particular, discrimination seems to be a broad enough target that it can be hit even with inperfect aim. The central question in this section, drawn from Leonard (1985a), seeks to answer is: what are the actual goals of affirmative action? The approach taken here is to infer the ends of affirmative action policy from an analysis of the historical record of actual enforcement.

Assertions concerning the ends of affirmative action are surprisingly common, especially when one realizes that only once in the past has the actual pattern of enforcement been analyzed. This pathbreaking study of Heckman and Wolpin (1976) examined the incidence of compliance reviews at a sample of 1185 Chicago area establishments during 1972. These compliance reviews are the first, the most common, and usually the last step in the enforcement process. Heckman and Wolpin find that the probability of review is not affected by establishment size, minority employment, or change in minority employment. They discover "no evidence of a systematic government policy for reviewing contractor firms". In other words, they find an essentially random enforcement process. This first analysis of targeting studied a relatively small sample in one city during the early 1970s, before the contract compliance program reached full stride. Do these early findings hold true for the nation as a whole after affirmative action regulations and procedures matured? Just as importantly, how are such results to be interpreted?

Which establishments does the OFCCP actually choose to review? Can we judge its motives from its targeting policy, and do the goals so revealed conform to those mandated in the Executive Order? The OFCCP has had, on paper, formal targeting systems such as the Revised McKersie System or the later EISEN system. These systems generally target in a sensible fashion against discrimination by selecting for review those establishments with a low proportion of minorities or females relative to other establishments in the same area and industry. But interviews with OFCCP officials in Washington and in the field suggest that these formal targeting systems were never really used. Instead of targeting on the basis of an establishment's past demographic record, compliance officers claim they simply reviewed the firms with the most employees, and the growing firms. This section shows which types of establishments were actually reviewed between 1974 and 1980, primarily by the Department of Defense. As such, the patterns shown here may not be indicative of current policies or practices of the OFCCP, nor of past practices of ther compliance agencies. In addition, part of the patterns observed here may reflect the requirements for pre-award compliance reviews.

The model of affirmative action as an earnings redistribution program has two testable implications. One can at best offer weak support for the hypothesis, while the second can provide somewhat stronger support. The first is that no particular pressure should be applied to firms with relatively few minorities or females. This is what we observe in Tables 4 and 5, reproduced from Leonard (1985a). While this strongly rejects the model of affirmative action as anti-discrimination in employment, it offers weak support for the alternative hypothesis of affirmative action as earnings redistribution because it is also compatible with other models of regulatory behavior. The second implication of the earnings redistribution model is that greater pressure should be brought to bear to shift demand curves where the supply of labor is relatively inelastic. In particular, this implies a higher incidence of compliance reviews at establishments with non-clerical white-collar intensive workforces. I find significant evidence that this is what the OFCCP has done.

If one thought of the OFCCP's primary concern as fighting the most blatant forms of prima facie employment discrimination directly in the workplace, one might then expect reviews to be concentrated at establishments with a relative small proportion of females and black males, controlling for size, industry and region. There is little consistent significant evidence of this in the past. In part, this may be explained by the requirement of pre-award compliance reviews. Establishments with the smallest proportion of minorities or females, ceteris paribus, are not consistently more likely to be reviewed for compliance with Executive Order 11246. Reviews are significantly more likely to take place, ceteris paribus, in non-clerical white-collar intensive establishments. Reviews are also more likely to occur at both large and growing establishments, where any costs of white males are likely to be more diffused.

How can the lack of a consistent targeting pattern by race or sex be explained? The larger establishments often employ a greater proportion of minorities and females. In interviews, field officers of the OFCCP have stated that they do not generally look at an establishment's past demographic record in targeting reviews. Reviewing large non-clerical white-collar intensive establishments with little regard for their past record of minority or female employment is consistent with an affirmative action effort that in terms of compliance review targeting is primarily concerned not with attacking the grossest prima facie forms of current employment discrimination, but rather with redistributing jobs and earnings to minorities and women.

The Impact of Title VII of the Civil Rights Act of 1964

While the central focus of this analysis has been on affirmative action under the Executive Order, it should be understood that the Executive Order has functioned within the backdrop of Title VII's Congressional madate and substantial legal sanctions. The dominant policy has been established under Title VII. What impact then has Title VII had? Without attempting to review this question as thoroughly as I have affirmative action, I can sketch some results. For a more complete discussion, see Brown (1984), Freeman (1981), Butler and Heckman (1977), and Smith (1978).

The broadest perspective may be gained by considering what changes have occurred in the earnings, income, occupational positions, and employment of blacks relative to whites before and after passage of the Civil Rights Act of 1964. In reviewing this evidence, Richard B. Freeman (1982, p. 3) finds that "virtually every indicator of positions shows a marked improvement in the economic status of employed black workers with -- as has been widely noted by various analysts -- gains concentrated among women, highly educated or skilled men, and young men. Virtually every indicator of positions also shows a marked acceleration in the economic status of employed black workers after 1964, when the U.S. antibias effort intensified as a result of Title VII of the Civil Rights Act of that year." (emphasis added) While a substantial part of this improvement can be attributed to the improved education of blacks [see Smith (1978)]; Title VII appears to have also contributed substantially and directly to improving the economic position of employed blacks at a given level of education.

While employed blacks appear to have approached parity with whites more rapidly since 1964, proportionately fewer blacks pass the initial hurdle of becoming employed. As Freeman (1982, p. 10) notes "At the same time that there has been a marked movement toward equality of earnings between employed blacks and whites, however, there has been a distressing deterioration in the likelihood of blacks holding jobs, particularly among the young. In 1964 the black male civilian employment/population ratio stood at .73, in 1969 it was .73, and in 1979 it was .64. By contrast, for white males, the ratio went from .78 (1964) to .78 (1969) to .75 (1979). Equally striking, the youth joblessness problem of the decade was one of increasing relative worsening in the black youth positions, for reasons that no one has yet satisfactorily explained. The aggregate data thus tell two stories: improvement for the employed but a reduction in the overall employment rate, especially in the 1970s".

More recently, attempts have been made by Beller (1979) and Leonard (1984c) to measure the impact of Title VII more directly using cross-sectional data. Beller (1979) examines the impact of EEOC sex-discrimination enforcement (complaint investigations and the ratio of successful to attempted settlements) on female and male earnings from 1967 to 1974. She finds some evidence that EEOC efforts have reduced the gender wage gap.

Class action suits under Title VII of the Civil Rights Act of 1964 are likely to have been among the most powerful prods to increasing minority and female employment, as Leonard (1984c) argues. Others have argued that the passage of the Civil Rights Act of 1964 reflected a diminished level of discrimination on the part of the electorate that one would expect to see reflected in improved employment opportunities for minorities and women even if the act were never enforced. Moreover, this line of argument proceeds, only a small proportion of establishments have been directly involved in Title VII litigation, so large effects are unlikely. This rosy view ignores the near defeat of the Civil Rights Act of 1964 and the continuing stream of litigation since, some of which has established broad precedents. Moreover, the Kennedy Administration believed the 1964 act was too strong to pass. Title VII, and in particular the clause extending protection to females, was supported by some congressmen because they believed it would doom the entire bill. It was precisely the provisions for enforcement through the courts that distinguished Title VII from its toothless, but equally noble, forebears and gave it prospects for effected change.

Before 1972, the Justice Department was empowered to bring suit through the courts for enforcement of Title VII's provisions. The EEOC's powers were limited to conciliation and persuasion. Since 1972 the power of litigation has been entrusted to the EEOC which, in turn, can pass it on to individual plaintiffs. By such recourse to the courts, the EEOC can sometimes accomplish in years what takes the OFCCP weeks. What it gives up in speed, though, it sometimes wins back in power through the setting of sweeping legal precedents. For example, the celebrated case of Griggs v. Duke Power did not simply aid Griggs or affect only Duke Power. By establishing the principle of disparate impact as prima facie evidence of discrimination, it placed a heavier burden on all employers to avoid the appearance of discrimination.

The major contribution of the EEOC, which oversees Title VII enforcement, has probably been in helping to establish far-reaching principles of Title VII law in the courts which can then be used by private litigants, rather than in directly providing relief from systematic discrimination through its own enforcement activity. A 1976 General Accounting Office review of direct EEOC enforcement activity concluded that it was generally ineffective. Most individual charges were closed administratively before a formal investigation. Charges took about two years to be resolved, and only 11 percent resulted in successful negotiated settlements. There was little EEOC followup to ensure compliance with conciliation agreements, and entering into a conciliation agreement caused no significant change in a firm's employment of blacks or females. Between 1973 and 1975, among 12,800 charges for which the EEOC found evidence of discrimination and was able to negotiate settlements, fewer than 1 percent had been brought to litigation resulting in favorable court decisions (U.S. GAO, 1976). Between fiscal years 1972 and 1976 the EEOC brought 462 cases to court (U.S. GAO, 1981). The much publicized charges brought by the EEOC against AT&T, GM, Ford, Sears, GE, and the International Brotherhood of Electrical Workers in the early seventies were largely anomalous. This major legal and public relations offensive was atypical of the Commission, which has normally been a reactive body slowly working its way through a mountain of individual complaints, many of which it discards as lacking substance. [See Hill (1983) for a critique.]

Despite its official mandate, the EEOC claims not to place great weight on such individual complaints in targeting enforcement, considering them unreliable. Rather, in interviews it claims to target by using EEO-1 forms to screen out establishments whose entry-level employment of protected groups compares poorly with that prevalent in the SMSA and whose professional employment falls short of the national norm. But according to the 1976 General Accounting Office report, "... the use of such (EEO-1) information in sophisticated methodologies for selecting targets for systematic enforcement activities has been minimal". The EEOC also claims to take into account community reputation, past charges, and the size of the company. It avoids large companies, finding them too hard to digest. Yet this targeting system has produced relatively few systemic charges. There is little evidence to suggest that the EEOC has focused its attention on large firms that systematically discriminate. I argue, however, that litigation under Title VII by private parties and by the EEOC constituted the cutting edge of government antidiscrimination policy.

Between 1964 and 1981 more than 5000 cases of litigation under Title VII, many of which were private suits, were decided in the federal district courts. More than 1700 of these were class action suits. These are the tip of an iceberg consisting of cases settled out of court or decided in state courts, but these class action decisions are likely to generate the most publicity, result in the largest awards, and affect the most people. What has been the impact of this Title VII litigation?

The enforcement of Title VII through the courts has contributed to a significant improvement of the employment and occupational status of blacks. In regressions of the change in the percentage of workers in an occupation who are members of a protected group on number of Title VII class action suits per corporation, percentage of employment in an industry by state cell that is in federal contractor establishments under the affirmative action obligation, and a lagged dependent variable, Title VII leads to sometimes negative but generally insignificant changes for white females, but to a moderate and significant improvement in the employment of blacks. The demand shifts for females may simply be swamped by the ongoing massive increase in labor supply. In addition, many of the early Title VII cases focused on racial rather than gender discrimination. The apparent ineffectiveness of antidiscrimination policy in promoting female employment remains an interesting question for research. Table 6 [reproduced from Leonard (1984c)] summarizes the impact of Title VII litigation. In this table Title VII litigation plays a significant role in increasing blacks' employment share.

For example, between 1966 and 1978 the proportion of all workers in manufacturing who were black increased from .08 to .12. On average, a Title VII class action suit per corporation raises this proportion to .277. Since there was an average of .011 such suits per corporation in a state by industry cell, about 7 percent of the improvement in black employment share can be attributed directly to Title VII litigation. The impact is even more pronounced for black females. This counts only the direct effects of litigation on firms in the same industry and state. In particular, it does not count the spillover effects onto firms in other industries and states from establishing credible threats and wide-ranging legal precedents. In fact, the greater the spillover, the less the differential impact of Title VII estimated here.

The proportionate impact of Title VII litigation is summarized in Table 6. This litigation has had its strongest impact in the white-collar occupations. Black gains through Title VII have been most striking in professional and management positions, suggesting that Title VII litigation has created pressure for occupational advancement as well as employment. The analysis here treats litigation under Title VII as exogenous. If one believes that Title VII suits that reach a decision in the federal district courts are more prevalent in firms with growing black employment, then the estimate presented here will be biased upward. More plausibly, in my judgement, if discrimination leads to both stagnant levels of black employment and to litigation, then my estimate of the impact of Title VII will be biased downward and the positive results shown here are that much more notable.

In sum, these results suggest that Title VII litigation has played a significant role over and above that of affirmative action. This impact has been greated for blacks than for women, and greater for the skilled than for the unskilled.

Antidiscrimination or Reverse Discrimination?

We have seen that despite poor targeting, affirmative action has helped promote the employment of minorities and women, and that Title VII has likely played an even greater role. This raises the most important and the most controversial question: has this reduced discrimination, or has it gone behond and induced reverse discrimination against white males? This is also the question on which our evidence is least conclusive. The finding of decreased employment growth for white males is not sufficient to answer the question since it is consistent with both possibilities.

The integration of the American workforce, by race and gender, has been among the most far-reaching and controversial goals of domestic policy in the past two decades. Some have argued that integration can be achieved only at great cost in terms of reduced productivity and profits, that forced equity will entail reduced productivity. Opponents of affirmative action have argued that employers were discriminating on the basis of merit, not on the basis of race or gender. If their contention is correct, then government policies that favor the hiring and promotion of minorities and women should cause a decline in their relative productivity. Equal pay restrictions will compound the inefficiency. The hypothesis inherent in this argument is that the relative marginal productivities of minorities and females have declined as their employment has increased and have not moved toward equality with relative wages.

Using estimates of production functions relating output to inputs for the manufacturing sector, Leonard (1984c) finds that relative minority and female productivity increased between 1966 and 1977, a period coinciding with government antidiscrimination policy to increase employment opportunities for members of these groups. There is no significant evidence here to support the contention that this increase in employment equity has had marked efficiency costs. The relative marginal productivities of minorities and women have increased as they have progressed into the workforce, suggesting that discriminatory employment practices have been reduced.

If we had observed that relative minority or female productivity fell while relative minority or female wages increased, one might suspect that government pressure under Title VII and Executive Order 11246 (affirmative action) had led to reverse discrimination. I find no significant evidence of reverse discrimination, nor of any signficant decline in the relative productivity of minorities or females. Direct tests of the impact of governmental antidiscrimination and affirmative action regulation on productivity find no significant evidence of a productivity decline. These results suggest that anti-discrimination and affirmative action efforts have helped to reduce discrimination without yet inducing significant and substantial reverse discrimination. However, the available evidence is not yet strong enough to be compelling on either side of this issue. Since the productivity estimates are not measured with great precision, strong policy conclusions based on this particular result should be resisted.

Conclusion

Based on my empirical work, and on that of other economists, I believe that the claims that affirmative action has been ineffective have been overstated. There have now been six establishment level studies that agree in finding that black male employment share has grown faster in federal contractor establishments subject to affirmative action than in non-contractor establishments.

The policy of affirmative action has had a short and turbulent history in this country. Of all the social programs that grew during the sixties, it has perhaps enjoyed the least measure of consensus. Its bureaucratic organization and body of regulations have undergone change at frequent intervals since its inception. While the targeting of enforcement could be improved, and while the impact of affirmative action on other groups is still subject to question, the evidence in this study is that affirmative action and Title VII have been successful in promoting the integration of blacks into the American workplace. Hopefully, evidence of the effectiveness of past affirmative action programs will be of some use as we prepare to enter the second generation of policy by troubled euphemism: non-preferential affirmative action.

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Table 1

Proportion of all Employees

Line	Demographic Group	Contractor Status	1974 Mean	1974 σ	1980 Mean	1980 σ	MeanΔ	Mean%Δ
1	Black	N	.053	.10	.059	.10	.006	28
2	Males	Y	.058	.10	.067	.10	.008	33
3			(6.0)		(9.4)		(6.5)	(3.6)
4	Other	N	.034	.10	.046	.10	.012	52
5	Minority	Y	.035	.08	.048	.09	.013	58
6	Males		(1.6)		(2.1)		(1.2)	(2.1)
7	White	N	.448	.27	.413	.26	−.034	−2
8	Males	Y	.584	.26	.533	.25	−.047	−4
9			(66.7)		(66.5)		(16.4)	(2.0)
10	Black	N	.047	.10	.059	.11	.012	47
11	Females	Y	.030	.07	.045	.08	.015	77
12			(24.0)		(19.2)		(5.7)	(10.8)
13	Other	N	.024	.08	.036	.08	.012	65
14	Minority	Y	.016	.05	.028	.06	.012	77
15	Females		(14.8)		(13.0)		(1.1)	(3.2)
16	White	N	.394	.27	.400	.26	.006	17
17	Females	Y	.276	.23	.288	.23	.012	30
18			(59.7)		(57.8)		(7.8)	(11.9)
19	Total	N	186	286	209	341	23	17
20		Y	271	728	276	720	5	21
21			(21.2)		(16.2)		(10.7)	(3.3)

NOTE.—*T*-tests across means in parentheses, on every third line. In every case, *F*-tests reject equality of variances across contractors and noncontractors, with more than 99% confidence. The last col. is the mean of percentage changes, not the percentage of change in means. *N* = noncontractor in 1974 (27,432 establishments), *Y* = contractor in 1974 (41,256 establishments).

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Table 2

The Effect of Contractor and Review Status on Employment Growth by Demographic Group (N = 68,690)

	Equations									
	White Males		Black Males		Other Males		White Females		Black Females	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
CONTRACT	−.012	−.032	.038	.056	.079	−.017	.028	.088	.123	.015
	(.003)	(.014)	(.011)	(.048)	(.014)	(.058)	(.006)	(.026)	(.013)	(.055)
REVIEW	−.00075	−.067	.079	−.189	.152	−.309	−.030	−.049	.061	.567
	(.004)	(.023)	(.015)	(.078)	(.018)	(.095)	(.008)	(.042)	(.017)	(.090)
ln *GROWTH*	.976	.982	1.223	1.117	1.087	.952	1.016	.970	1.190	1.067
	(.003)	(.005)	(.009)	(.018)	(.010)	(.022)	(.005)	(.010)	(.010)	(.021)
ln *SIZE*	.0018	−.0018	.0019	.0002	.050	.029	−.005	.003	.020	.013
	(.0011)	(.002)	(.0040)	(.007)	(.0040)	(.009)	(.002)	(.0049)	(.004)	(.008)
SINGLE	.028	.029	−.010	−.003	.064	.077	−.077	−.077	−.076	−.066
	(.004)	(.004)	(.013)	(.013)	(.016)	(.016)	(.007)	(.007)	(.015)	(.015)
PWC	−.076	−.066	.093	.087	−.006	−.016	−.029	−.034	.006	.003
	(.007)	(.007)	(.002)	(.022)	(.026)	(.027)	(.012)	(.012)	(.025)	(.025)
CXG	. . .	−.0009	. . .	.126	. . .	.153	. . .	.042	. . .	.113
		(.006)		(.021)		(.025)		(.011)		(.024)
CXS	. . .	.0037	. . .	−.002	. . .	.018	. . .	−.010	. . .	.018
		(.002)		(.008)		(.010)		(.004)		(.009)
RXG	. . .	−.043	. . .	.057	. . .	.124	. . .	.107	. . .	.294
		(.008)		(.027)		(.032)		(.014)		(.031)
RXS	. . .	.009	. . .	.038	. . .	.066	. . .	.004	. . .	−.067
		(.003)		(.011)		(.013)		(.006)		(.012)
R^2	.70	.70	.25	.25	.15	.15	.45	.45	.20	.20

Note.—Standard errors in parentheses. All equations include 27 industry and four region dichotomous variables. *CONTRACT* is a dichotomous variable set to one if the establishment was part of a federal contractor company in 1974. *REVIEW* is a dichotomous variable set to one if the establishment had a compliance review between 1975 and 1979. *SINGLE* is a dichotomous variable set to one if the establishment was not part of a multiestablishment company. *PWC* is the proportion of nonclerical white-collar employees in 1974. *SIZE* is total employment in 1974. *GROWTH* is total employment growth rate, 1974–80. *CXG* is the interaction of *CONTRACT* × ln *GROWTH*. *CXS* is the interaction of *CONTRACT* × ln *SIZE*. *RXG* is the interaction of *REVIEW* × ln *GROWTH*. *RXS* is the interaction of *REVIEW* × ln *SIZE*. The dependent variable is the logarithm of the growth rate of employment of the given group.

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Table 3

MEANS OF PROJECTED AND ACTUAL EMPLOYMENT LEVELS BY DEMOGRAPHIC GROUP (N = 5240)

	Mode Year			
	1974 Lagged 2 Years	1975 Lagged 1 Year	1976 Projection	1976 Actualization
Black male	54	55	61	54
Minority nonblack male	38	40	42	40
White male	628	623	615	602
Total male	720	718	718	696
Black female	34	35	39	35
Minority nonblack female	20	21	23	22
White female	218	216	222	210
Total female	272	272	284	267
Total	992	990	1001	963

Note: The first column is the actual level of employment one year before the projection was made. The second column is the actual level of employment in the year the projection was formed. The third column is the projection. For the mode observation, this is a one-year-ahead projection made in 1975 for the level of employment expected to occur in 1976. The fourth column is the level of employment actually realized in the following year.

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Table 4

Proportion of Defense Contractor Establishments Reviewed from 1975 to 1979, by 1974 Black Male Employment Share (*N* = 7,968 Establishments)

Line	Black Male Employment Share, 1974	*N*	Proportion Reviewed
1	.00	1,773	.106
2	.01-.02	1,672	.226
3	.02-.04	1,260	.263
4	.04-.06	761	.254
5	.06-.08	490	.255
6	.08-.10	380	.279
7	.10-.20	911	.301
8	.20-.50	633	.273
9	.50-.70	72	.083
10	.70-1.00	16	.188

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Table 5

Proportion of Defense Contractor Establishments Reviewed from 1975 to 1979, by 1974 Female Employment Share (*N* = 7,968 Establishments)

Line	Female Employment Share	*N*	Proportion Reviewed
1	.00	74	.000
2	.00-.05	1,073	.161
3	.05-.15	2,072	.217
4	.15-.25	1,093	.233
5	.25-.30	397	.252
6	.30-.35	404	.277
7	.35-.40	404	.297
8	.40-.50	707	.270
9	.50-.70	980	.232
10	.70-1.00	764	.283

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Table 6

ESTIMATED EFFECT OF THE NUMBER OF TITLE VII CLASS ACTION SUITS DECIDED IN THE FEDERAL DISTRICT COURTS ON THE 1978 PROPORTION OF EMPLOYMENT BY OCCUPATION, 1966–1978

		Mean		% Change 1966–78	% Change in Proportion Due to a Change in Number of Cases per Firm	Change in Standard Deviation of Proportion Due to a Standard Deviation Change in Number of Cases
		1966	1978			
1.	Black proportion of all employment	.081	.120	48	3.4**	.088
2.	Black male proportion of male employment	.083	.112	32	2.9**	.083
3.	Black female proportion of female employment	.056	.135	141	13.0**	.213
4.	Black proportion of all white-collar employment	.011	.042	282	12.4**	.150
5.	Black male proportion of male white-collar employment	.010	.034	240	11.0**	.148
6.	Black female proportion of female white-collar employment	.012	.060	400	22.5**	.210
7.	Black proportion of all profes. and managerial employment	.005	.029	480	31.6**	.246
8.	Black male proportion of male profes. & managerial employment	.005	.026	420	28.8**	.238
9.	Black female proportion of female profes. & managerial employment	.011	.048	336	28.6**	.258
10.	Black proportion of all blue-collar employment	.104	.150	44	3.0**	.082
11.	Black male proportion of male blue-collar employment	.109	.144	32	2.4**	.072
12.	Black female proportion of female blue-collar employment	.082	.174	112	10.5**	.196

Note: Estimated from regressions for 555 state by industry cells in manufacturing, with 1966 proportions of blacks in relevant category, and cell proportion of employment in federal contractor establishments held fixed.
** Significant at 1 percent level.

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